AUSTRALIAN
STATE PUBLIC FINANCE

AUSTRALIAN

STATE PUBLIC FINANCE

By

W. J. CAMPBELL

Auditor-General of the State of New South Wales.

AUSTRALIA:

THE LAW BOOK CO. OF AUSTRALASIA PTY LTD.

SYDNEY - - - - - - - - - 140 PHILLIP STREET
MELBOURNE - - - - - - - - 425 CHANCERY LANE
BRISBANE - - - - - - - - 21 ADELAIDE STREET

1954

Printed by
TONECRAFT PTY. LTD.
520 Marrickville Road,
Dulwich Hill

Registered in Australia for Transmission through the Post as a book

PREFACE

Students and others interested in Australian Public Finance have very little to help them in the way of published works. I have endeavoured in this publication to make a small contribution to the subject, dealing primarily with financial theory and practice as followed in the State of New South Wales, and touching upon the remaining States so far as it is necessary, within the scheme of the book, to trace the influence of Federal and State relationship in shaping their financial systems.

This relationship provides a background to a number of the chapters, the subject matter of which has been so arranged that it is hoped the reader will be able to follow the financial pattern of Australian federation as originally designed and as it has developed over the past fifty years. The finances of the States are deeply interwoven with those of the Commonwealth and it would be impracticable to write in any detail upon the Public Finance of either order of government without extensive reference to that of the other.

I have aimed throughout the book at an objective treatment and wherever it has been necessary to refer to the policy underlying financial practice, it is not to be gathered that I am expressing any views in my official capacity in the service of the State of New South Wales.

I am mindful of the extent of error which would have remained in several chapters, were it not for authoritative advice and assistance received from a number of public officers. In this regard my special thanks are due to Mr. A. Pickering, Clerk Assistant of the Legislative Assembly, Mr. A. R. Jones, Under Secretary, Department of Lands, and Mr. C. J. Taylor, Assistant Commissioner with Mr. W. A. Hayler, Supervising Assessor of the Stamp Duties Office.

Mr. T. H. Kewley, Senior Lecturer, Department of Government at the University of Sydney, was kind enough to read the manuscript while it was in a very rough state. I trust this brief acknowledgment will be sufficient to make him realize my appreciation of the encouragement received from him throughout the subsequent stages of improving the material and getting it into print.

W. J. CAMPBELL.

Sydney, New South Wales,
December, 1953.

CONTENTS

Chapter I

THE CONSTITUTIONAL BASIS OF STATE FINANCE

The Financial System

Sources of Financial Practice. The financial system of New South Wales is framed in part in the written law, to some extent in the Constitution Act but more notably in the general finance statute, known as the Audit Act. For the rest of its written part the system is derived from a wide range of statutes, each designed to set up appropriate financial machinery for the particular sector of government activity to which it relates. The system is by no means static, although both the Constitution Act and the Audit Act have remained unaltered in essential financial features since they were re-enacted a half century ago. The sources of change are to be found in legislation creating new financial activities over the years, and also externally—in the Federal Constitution, to which State finances are in many vital respects subordinate. Perhaps the Federal Constitution, as it has unfolded, is most important of all, for no single influence has been more potent in re-shaping the course of State finance in Australia than the development of State and Commonwealth relationship under federation.

Apart from the written law, the financial system is based on custom and usage, either inherited or local in origin. In its constitutional element it is in many respects patterned on British institutions, more especially in its emphasis on procedures, stemming from the traditional principle of Parliamentary control of the purse, that so strongly distinguish the practice of public finance from that of private finance.

Provisions of a financial character do not run to many sections in the Constitution Act. They establish the groundwork of State financial practice in its constitutional sense and for an understanding of the detailed structure it is necessary to delve extensively into the general statute law. The Constitution Act itself is the more expansive in relation to financial matters when it treats of the legislative organization and power. It deals to a lesser extent with the executive system and then only with the

formal executive, giving no mention to the Cabinet upon which, through the finance Minister, devolves the real authority and responsibility in executive finance. To appreciate the significance of such references to the Executive as appear in the Constitution Act the student of that Act requires at the outset a knowledge of the extent to which the form and substance of executive practice in the State is founded on convention rather than written into the Constitution statute.

In common with other countries which follow the British form of Parliamentary government, New South Wales has adopted the idea of a general finance statute, incorporating therein a number of basic principles for the conduct of the business of government, all geared to the system of Parliamentary financial control. Much of the administrative structure of public finance in the State is set out in the Audit Act, the scope of which falls into two broad divisions, one dealing with financial practice, the other with Parliamentary oversight and audit safeguard. Provisions concerned with the first objective provide the legal machinery for the collection, disbursement and custody of public funds. They centre about the Treasurer and their detailed application is given effect through regulations issued by that Minister under authority of the Act. In the course of sections aimed at the second objective the Audit Act directs that there be constituted a Parliamentary body known as the Public Accounts Committee and it also sets up the office of Auditor General. Coupled with measures for review by the Committee of prescribed matters it requires the Auditor General to examine and report to Parliament upon the Public Accounts.

Apart from the Constitution and Audit Acts, the law governing State financial practice is to be found scattered over numerous enactments. The more important of these are the Public Service Act, the recurring fund raising and spending Acts and those expanding the activities of the State beyond the purely governmental sphere. The last mentioned are the most extensive of all. In some degree the influence of principles laid down by the Audit Act is to be observed in statutes regulating activities of an extra-governmental character but in many respects these statutes lay down their own procedures, so that in the aggregate they impart a distinct variety to the financial system. Their particular features are discussed at appropriate stages throughout this book.[1]

---

[1] See particularly Chapter XIII dealing with the finances of statutory corporations.

Some Effects of Federation. Judicial interpretation linked with the course of events of a social, political and economic character has given a great impetus to the speed of Australian federalism, especially during the past ten years or so. Latent financial powers of the Commonwealth have come to life, creating for the central government a wide ascendancy over the States. This superior Federal power has manifested itself in many ways and, indeed, the predominance of Federal thought and purpose is often one of the chief determinants of policy over an extensive area of State government activity. While it is not within the scope of this book to treat of changes in the general structure of Australian government brought about by the workings of federalism, in dealing with the constitutional background to State public finance some notice needs to be given to the Commonwealth Constitution. A brief reference to the major influences exerted by that instrument upon the financial system of the State would seem to be desirable for the purpose of the present part of this chapter.

When the British Parliament by the passing of the Commonwealth of Australia Constitution Act at the commencement of the present century gave legal effect to the agreement of the Australian people to unite under a federal form of government the State of New South Wales re-enacted its Constitution Act. A declaration of sovereignty, qualified to give recognition to the new level of State legislative authority brought about by the Federal compact, was introduced into the statute. It was enacted that "the Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever". These words indicate by their generality the residual nature of the powers left to the States under federation, and for a more specific guide to the division of governing authority between the Commonwealth and the States it is necessary to look at the Commonwealth of Australia Constitution Act. Apart from the preamble that Act sets out the Federal Constitution, enumerating therein the matters over which the Commonwealth Parliament has power to legislate. Some of these are declared by the Constitution to be exclusive to the Commonwealth but in the majority of matters the Federal and State Governments have concurrent powers, the Commonwealth power being superior to that of the States. All matters outside those enumerated are the concern of the States.

Federation left many functions of government to the States, and the lawmaking authority necessary for the discharge of these functions ostensibly remained with the State Legislatures. In the

act of federation as entered into by the States there was contemplated a division of sovereignty according to needs at the National and State levels, each unit of government to be free to act to the extent of its constitutional jurisdiction, or as jurists have later described it, to be sovereign within its own sphere.[2] For the States, sections 106 and 107 of the Constitution appeared to afford ample guarantee:—

> "*Section* 106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.
>
> *Section* 107. Every power of the Parliament of a Colony which has become or becomes a State shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be."

It is a feature of many of the functions remaining with the States that they carry with them heavy financial obligations requiring a regular supply of capital and revenue funds for their performance. Functional responsibilities have never been matched, however, by financial means directly accessible to the States and the gap has greatly widened in more recent years during which the Commonwealth, unhindered by limits to fund raising powers, has drastically enlarged its control of the country's fiscal resources. It is now an inescapable fact that the States may have direct access to such of the major sources of income of a governmental character as the Commonwealth, giving first consideration to its own needs, chooses to allow them. Much of the deterioration in the political status of the States foreseen by astute observers at the time of federation has thus come about:—

> "The rights of self-government of the States have been fondly supposed to be safeguarded by the Constitution. It has left them legally free but financially bound to the chariot wheels of the Central Government. Their needs will be its opportunity . . . The Commonwealth will have acquired a general control over the States while every extension of political power will be made by its means and go to increase its relative superiority."[3]

The Federal climb to political ascendancy has been marked by three distinct financial events in the course of federalism—one, part of the original federation bargain itself, and the other two stemming from it. The first of these was the surrender under

---

[2] "The powers of the State were left unaffected by the Constitution except in so far as the contrary was expressly provided; subject to that each State remained sovereign within its own sphere. The powers of the State within those limits are as plenary as are the powers of the Commonwealth." (*James* v. *Commonwealth* 55 C.L.R. at p. 41).

[3] Alfred Deakin in a letter to *The Morning Post,* 1st April, 1902.

the Constitution of the authority of the States to impose customs and excise duties; the next was their entry into the Australian Loan Council arrangement under which they gave up their rights to pursue borrowing programmes independent of each other and of the Commonwealth; and the third was their exclusion by force of unilateral action on the part of the Commonwealth from the field of personal and corporate income taxation.

During a period that might roughly be called the first quarter century of the Commonwealth the workings of federation wrought no great change in the financial system of the States beyond that contemplated in the Federal pact. The beginnings of a grants system followed the loss of the customs and excise power, but amongst the more affluent States at least, the early importance of the grants in relation to the total revenues tended to lessen as independent fund raising sources were exploited to an increasing extent. So long as the means of taxing incomes remained, the States continued to exercise sovereign authority in raising revenues in varying degrees approaching their needs. They were masters of their own budgets and except for the revenue fields relinquished under federation, they controlled the shape and content of their fiscal systems.

The transformation which brought about the present situation belongs to the second twenty five years of federation. The subordination of State borrowing programmes to the dictation of the Loan Council formed part of a Financial Agreement entered into by the Commonwealth and the States in 1927. It was not until another decade had passed and the economy of the country had been drawn into the maelstrom of World War II that uniform income taxation under the exclusive jurisdiction of the Commonwealth was introduced. The financial supremacy of the Commonwealth, implicit in the Loan Council arrangement and always to the fore in deliberations of that body, was then demonstrated in full. With uniform income taxation accomplished, the sovereign authority of the States was virtually ended in both the capital and revenue fund raising fields.

Thus the detached and independently managed financial organisations of the States were drawn into the scheme of central monetary and economic control fostered by federation. With the disappearance of much of the substance of State fiscal sovereignty, the constitutional usages upon which financial practice had previously been established became of lesser consequence in the financial systems, and in a number of detail features the systems were considerably changed. It is only necessary at this stage to outline the more momentous of these changes with particular

reference to their bearing upon constitutional powers exercisable by the States in the conduct of financial affairs.

While the State Parliaments in ratifying the Financial Agreement of 1927 retained their right to determine the purpose of spendings on loan account they gave up the all embracing authority previously exercised by them over loan raisings. The Parliaments may, if they so wish, depress any borrowing programme put forward by their Executive Governments, but the crucial fact is that they are subject to external control in relation to upward limits and also the terms and conditions of public loans. Borrowing policy is now unified at the national level. The old time legal structure of a State debt owing directly to the bondholder is replaced by a Loan Liability to the Commonwealth whereby a State is obliged to meet charges on federally controlled borrowings raised on its behalf. Moreover, by the same centripetal influences that brought their loan raising operations into the Federal domain the States were obliged in the Financial Agreement to enter into a national scheme of repaying public debt. Had the Australian States continued to raise their own loans, in all probability circumstances sooner or later would have compelled them to introduce contemporary provision for debt repayment. Undoubtedly, however, it was the working of federation that hastened this vital change in the country's public finance and has since given it abiding force.

With their capital fund raising operations thus firmly tied in with the central system the States next passed to a phase of centrally controlled revenue financing. Uniform income taxation ushered in the tax reimbursement grant, thus replacing the States' own tax levying systems. The grant is always a matter for bargaining between Federal and State Governments but in the ultimate the decision rests with the Commonwealth Parliament, so that the role of a State Legislature, perforce, is one of passive acceptance of the sum so decided. So far as State Parliamentary government is concerned there occurs little of the real substance of Ways and Means action in relation to the great part of the general revenues centred in the reimbursement grant. Sanctions by the Parliaments are limited to expenditures from the grant. Here then is to be noted the most vital abrogation of State sovereignty stemming from the federation, in that the principle of control of the purse by Parliament, in the traditional tax regulating sense no longer prevails.

Beyond the uniform income taxation grant and other assistance of a general revenue character there is to be observed also a wide range of special purpose grants made by the Commonwealth to the States. These owe their origin, in the main, to the

superior fund raising power of the central Government and often they mark Federal encroachment upon some or other State functional activity. Conditions governing disbursements of the grants in the hands of the States are laid down, so that State Legislatures have no power of appropriation over them. In their entirety disbursements from special purpose grants make up an important sector of State financial activity, distinguished by their isolation from the practices of Parliamentary control of expenditure, which otherwise form the keystone in the structure of State constitutional finance.

Legislative and Executive Structure

The Legislature. New South Wales is the oldest and in point of population and wealth the largest of the six States joined in the Commonwealth of Australia. It was founded in 1788 under a Crown Colony system of control which prevailed until responsible government was granted in 1856. In its bicameral structure and in many of the forms which governed its proceedings the Legislature of New South Wales as introduced under self-government largely followed the British model. It consists today of an Assembly and a Council, the latter corresponding in a sense to the English House of Lords while the Legislative Assembly is the popularly elected body.

The Legislative Council, with a history that goes further than self-government itself, is the older of the two Houses. It was first established in 1823 and, although granted only advisory powers, its commencement was the first step in the transition from the absolute rule of the Colonial Governors to the dignity of self government. For almost twenty years the Council was wholly nominee but commencing in 1842 portion of its membership was elected within a limited franchise. Upon the inauguration of the full Parliamentary system in 1856 the Council became the second chamber and despite a strong sectional urge to unicameralism it has retained its place in the system. From 1856 until 1933 it was entirely a nominee body. Its members were appointed for life by the Governor and since their number was not restricted by law, the principle of adding new members became in course of time a recognised constitutional convention. Under amendments for its reform introduced into the Constitution Act in 1933, the Council emerged with a statutorily fixed number of members all subject to retirement in rotation and elected from time to time by vote of the two Houses joined as one electoral body.

Responsible government in Australia has known many conflicts between Upper and Lower Houses over the right of the

former to amend Money Bills, and the history of bicameralism in New South Wales in this respect is little different from that of other States possessing similar Parliamentary institutions. For a number of years following its inauguration the Legislative Assembly claimed an exclusive authority over financial legislation. It did not do so, however, by force of express constitutional provision, for the early Constitution Act was silent upon the respective rights of the two Houses. The Assembly rested in fact upon its representative character, paralleling itself with the British House of Commons and the Legislative Council with the House of Lords. The authority which the House of Commons had asserted against the House of Lords in reference to the right of the latter to amend Money Bills was claimed by the Assembly as against the Council.

Despite its non-elective status and the risk of coercion to which the principle of additional appointments (swamping) exposed it, the Council persistently opposed the Assembly's assertion of prerogative. Claiming the right to amend all Bills provided such amendments had not the effect of appropriating any part of the public revenue or of imposing a new rate, tax or impost, the Council on many occasions, moved for the insertion of alterations in financial measures.

Although the Assembly, in the early days of self-government, refused to consider any such alterations it later modified this attitude to the extent of conceding a limited co-ordinate power. Amendments were accepted "where they did not alter whether by increase or reduction the amount of a rate or charge, its duration, mode of assessment, levy, collection, appropriation or management; or the persons who pay, receive, manage or control it, or the limits within which it is leviable".[4] In various ways and in a number of instances, however, Upper House amendments, in the opinion of the Assembly, clashed with the principle thus enunciated and, whether accepted or rejected, the amendments were placed on record by the latter as an infringement of its rights and privileges.

The whole question was brought within the letter of the Constitution when the Legislative Council was reformed in 1933. Sections were then written into the Constitution Act giving a prerogative right to the Assembly over Bills appropriating funds for the annual public services and setting out a course of action to be followed in the event of disagreement and deadlock between the two Houses in relation to any other legislation.

[4] *Parliamentary Debates* 1899 Vol. 97 p. 887.

As to the first type of legislation, section 5A, as then inserted in the Constitution Act, directs:—

"(1) If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty's pleasure thereon, and shall become an act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

(2) The Legislative Council shall be taken to have failed to pass any such Bill, if the Bill is not returned to the Legislative Assembly within one month after its transmission to the Legislative Council and the Session continues during such period."

Section 5B gives the Council co-ordinate powers in all other forms of legislation. But it provides also that disagreement between the two Houses, if not settled firstly by free conference of managers of the respective chambers, may be deliberated upon by their members in joint sitting. No vote is to be taken at the joint sitting but as a result of the background developed from the combined deliberations, the Assembly may again approach the Council in search of agreement. On the other hand the Assembly, without making such an endeavour, may, by resolution, direct that the Bill be submitted to the electors by way of referendum.

It will be seen that the Constitution as amended by these sections confirmed the Lower House claim of prerogative only over the voting of money for the services of government. Since amendments by the Council to Bills for this purpose can have no effect unless agreed to by the Assembly, the Council never amends or delays an appropriation measure. The rights of the Council are well established in all other respects and indeed, as the Constitution Act now stands, they go further than had been claimed in earlier conflicts with the popular chamber. Many forms of Money Bills come within the scope of Upper House amendment, including those of a fund raising nature. It is true, of course, that such amendments do not become law unless the Assembly concurs in them but the Council is sufficiently powerful to prevent the passing of any Bill of which it disapproves, the Assembly's remedy in this event being to put the matter at issue specifically before the people for decision.

The provisions thus written into the Constitution in 1933 were added to by another, designed to protect the Upper House against any abuse of the restriction placed upon its power to amend Money Bills. It was enacted that a Bill assented to by the Governor following Lower House recourse to the machinery

of section 5A shall be valid only to the extent of the fund appropriation clauses contained in it. "If a Bill which appropriates revenue or moneys for the ordinary annual services of the Government becomes an Act under the provisions of this section, any provision in such Act dealing with any matter other than such appropriation shall be of no effect".[5] Hence clauses of a non fund appropriating character attached to a Supply Bill may be successfully resisted by the Legislative Council. The Council is thus safeguarded against the practice described as "tacking" — a device not unknown in the history of Upper and Lower House friction in Australia and consisting of the inclusion in a Money Bill of extraneous matter in an attempt to place the matter outside the scope of amendment by the Upper House.

Appropriation and tax raising measures must originate in the Legislative Assembly and none but the Executive may initiate them. These longstanding conventions of British Parliamentary practice have been part of the written Constitution of New South Wales since its first enactment. In directing that a Supply or Taxation Bill may not be introduced in the Legislative Council the Constitution Act declares that for any such Bill to be lawful it must first be recommended to the Representative House by a message from the Governor. The Legislative Assembly cannot of itself initiate a Money Bill—the authority rests solely with the Governor's advisers. Only the body responsible for the conduct of the finances (the Executive) therefore has any say in the drafting of measures for their management.[6]

Several other sections of financial consequence are devoted in the Constitution to the Legislature. One, reminiscent of the outstanding importance of land revenue in the early days of the Colony, empowers it to make laws regulating the sale, letting,

---

[5] *Section* 5A (3). It is of interest to note the words of the Federal Constitution dealing with the same matter in relation to the respective powers of the House of Representatives and the Senate over Money Bills—

"*Section* 54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriations.

Section 55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect."

[6] Referring to the principle of Parliamentary government thus given effect in the Constitution Act of New South Wales, Ursula K. Hicks (*Public Finance* pp. 59, 60) says—

"It is completely effective in preventing either government back benchers or members of the opposition from wrecking the balance of a financial plan by trying to go 'one better' than the government, a habit which is the cause of endless trouble in countries which do not follow the British Constitution in this respect."

disposal and occupation of the Crown lands. Another (linked with a provision for the institution of a Consolidated Revenue Fund) directs the payment by way of a Civil List of several sums set out in schedules to the Act as salaries for the Governor, the judiciary and other public officers, and also as pensions attached to certain prescribed offices. The traditionally British formality whereby the hereditary revenues of the sovereign are surrendered to Parliament in return for an annual grant is thus given recognition, for the Constitution Act directs that the sums so named shall be accepted by His Majesty in place of his Sovereign revenues. Subject to the charges named in the Civil List the Legislature is empowered by the Constitution to appropriate the Consolidated Revenue Fund to such specific purposes as it may at any time enact.

There is to be noted finally a provision of the written Constitution whereby members of the Legislative Assembly are debarred under penalty of forfeiture of their seats from accepting any office of profit under the Crown. The rule is of historic interest. It is intended to prevent a Government purchasing the vote of a member of Parliament at the price of an office of State. Exceptions to the rule are found to be necessary, but these are expressly provided for. Thus Ministers of the Crown are not debarred from sitting in Parliament, although the special emoluments attaching to their positions as members of the Executive Government make them the holders of offices of profit under the Crown.

The Crown. Although joined together in a national sense by federation each of the Australian States is in itself a unit of self-government within the British Commonwealth, bound by sentiments of loyalty and owing separate allegiance to the Imperial Crown. Much of the formality of their executive and legislative systems is centred around the Crown, which is directly represented in them. In a legal sense the reigning monarch is the head of the State Parliaments. By section 3 of the Constitution Act of New South Wales "the Legislature" is declared to mean "His Majesty the King with the advice and consent of the Legislative Council and Legislative Assembly" and in similar phraseology the opening section of every State enactment names the Crown with the Legislature as the enacting authority.[7]

The Crown in the State is typified by the Governor, who is the personal representative of the monarch and titular head of the

---

[7] The Constitution Act provides for variation in the wording of the enactment section should an appropriation Bill have become law in accordance with the machinery of section 5A or should a Bill be passed after a referendum under section 5B. In each case only the Legislative Assembly is named as the advising and consenting authority.

Government, carrying on the formal duties of the Crown in the legislative and executive sphere. The Governor is appointed by His Majesty on advice given by his Ministers in the United Kingdom after consultation with the State Government. Aside from the duties set out in the instrument of his appointment many functions and responsibilities are assigned to the Governor by the Constitution and the general statute law, as well as by convention. He summons, prorogues, and should he deem it expedient, may dissolve Parliament.[8] Except in a few cases where reserved to the monarch the royal assent necessary to make a Bill an Act of Parliament is signified by the Governor and unless any other date is fixed by an Act, or by proclamation under it, the Act commences from the day this assent is given. In the Governor is centred the formal authority of the Crown over the public revenues and expenditures. By traditional law the public revenues are revenues of the Crown. They are made available by vote of the Legislature for the services of the Crown and they may not be expended by the Executive unless authorized by warrant of the Governor on the royal behalf.[9]

Under the terms of his appointment by the sovereign the Governor is bound to uphold the Constitution. The history of State Governors goes back to the days when they possessed real power, but with self-government the Governor, in discharging the authorities vested in him, is guided by the advice of his responsible Ministers. Confronted with an issue deemed to warrant it he may reject this advice and if needs be seek an expression of the popular will by dissolving Parliament. The Governor's authority to reject the advice of his Ministers does not come, however, from the written law. It belongs to the so called reserve powers of the Crown. The extent of these powers and the circumstances under which they may be used, have been the subject of political disputation on occasions in the past and some volume of juridical literature surrounds them. Broadly speaking, however, the Governor's prerogative is held to be exercisable in the event of malpractices or extremities in government rather than in normal times. The general nature of the position is such that the Governor is the guardian of the Constitution and is bound to see that his reserve powers are not used otherwise than in the public interest.

While the course of responsible government in New South Wales, as in other Australian States, is not lacking in instances

---

[8] Constitution Act (section 10). The Governor's authority to summon and prorogue Parliament applies to both houses but only the Legislative Assembly may be dissolved.

[9] For a description of the warrant procedure see Chapter IV.

of the Governor's refusal to accept the advice of responsible Ministers, disputes for the most part have been concerned with political rather than financial issues. The change in the status of the Upper House from a nominee to an indirectly elective chamber, already referred to, removed one matter, potentially contentious, from the political scene, since under the nominee system proposals for swamping the Upper House were always likely to arise between the Governor and his Ministers. The unwillingness of the British Government to interfere in matters of local concern has added to the force of self-government in the State over recent years and with orderly administration of public affairs the rule generally is for the advice of Ministers to prevail in all matters so long as the Ministry possesses the confidence of the popular House.

Now almost a quarter of a century past, the last dispute between the Governor and the Ministry of the day in New South Wales concerned a financial issue. In 1927 the States, as already noted, entered into a financial agreement with the Commonwealth whereby the Commonwealth took over the liability to bondholders for then existing State debts and agreed to carry out all future loan raisings on behalf of the States, the latter to reimburse the Commonwealth for their proportions of interest and other charges on the debts. In 1932 New South Wales, under stress of the depression conditions then prevailing, refused to meet its interest charges, whereupon the Federal Parliament enacted a Financial Agreement Enforcement Act empowering the Commonwealth to take the revenue of a State in execution of the amount of its default. New South Wales resisted the legislation, first by High Court appeal and afterwards by administrative devices, amongst which was a direction by the Government to Accounting Officers not to pay collections into banks in which the public account had been kept. In the course of ensuing correspondence and discussion between the Governor and the Premier, the Governor referred to the breach of law involved in this direction and added:—

> "I feel it my bounden duty to remind you at once that you derive your authority from His Majesty through me, and that I cannot possibly allow the Crown to be placed in the position of breaking the law of the land."

Following the Premier's refusal to withdraw the instructions the Governor dismissed the Ministry. In due course Parliament was dissolved and a general election followed.

The Executive. In the same traditional sense that the lawmaking authority is centred in the King in Parliament, the executive government is carried on in the name of the Crown. The Governor, as already noted, is the head of the Executive, and

in this capacity he exercises the nominal authority of the Crown over the actions of government. Around him in Council are his advisers, the Ministers appointed by him to control the various departments of State, the whole constituting a body which is known in State affairs as the Governor-in-Council, or the Executive Council.

From the prerogative right of the Crown to surround itself with advisers comes the idea of the Executive Council. The King appoints the Governor and by virtue of authority conferred upon him in the Letters Patent constituting his office the Governor appoints the Council. It is an established principle in the State that members be drawn from Parliament; hence the composition of the Council is determined in advance by selections made by the dominant party in Parliament for the purpose of forming a Government. Upon being so selected the appointment of the same persons as Executive Councillors and Ministers of the Crown follows, for in making the appointment the Governor is guided by the recommendation of their leader, who becomes the chief Minister of the State, or Premier.

Thus the written Constitution is in no way concerned in the creation of the Executive Council. Its existence is inferred, however, in several sections dealing in an ancillary way with the functions of councillors, and moreover the many executive authorities assigned to it from time to time by Parliament give the Council frequent mention in the general statute law. Throughout all its functions, whether based on the conventions of the constitution or upon the written law, the Executive Council exercises authority in a purely nominal sense. Its approvals impart legal effect to the executive actions of government, and meetings at which these approvals are given, are of a formal character. The substance of decision rests in Ministers of the Crown whether acting individually within the sector of departmental organisation allotted to each or collectively as the Ministry or Cabinet. The British system of responsible Cabinet government is followed by New South Wales and only traditional regard for formality coupled with a spirit of loyalty to the Crown which the Executive Council signifies, can explain the existence of the Council within the State's organization of government.

All the powers held by Ministers in accordance with the authority conferred on them to control the departments of State and to administer the body of statute law are pooled in the Cabinet. under the leadership of the Premier. The operation of the Cabinet system needs no treatment for the purpose of this book. In New South Wales there are 16 Cabinet Ministers, with the office of Premier and Treasurer usually combined in the one person, who

may be aided by an Assistant Treasurer. Whilst most of the remaining individual offices have for long been linked with the earliest State functions such as education, land settlement, justice and public works, several other activities, including housing, agriculture and the conservation of natural resources, have more recently attained separate Ministerial status. The State system does not provide for appointment of Secretaries to Ministers, drawn from Parliament. In detail administration Ministers act through Under Secretaries appointed by the Governor from the permanent Public Service on the recommendation of the Public Service Board. These officers have no affiliations with political parties but are bound to serve whatever government is in power, and changes of government or of Ministers do not affect their tenure of office.

Power to spend from Parliamentary appropriations is exercised individually by Ministers, each acting in his own departmental sphere. Vote spending is the outstanding financial responsibility of a Minister but many other such responsibilities fall upon him and naturally this applies to the greatest extent to the Treasurer. On the other hand a long list of financial functions is reserved to Ministers collectively, or stated in the more formal sense, to the Governor-in-Council. The division of authority in financial matters between the two executive levels does not depend upon any fundamental rule; it is governed rather by legislative sanctions as expressed throughout the general statute law. With the ever widening range of government action and the constant flow of new enactments the formal authority of both the Executive Council and the individual responsibility of Ministers of the Crown in financial matters are constantly being enlarged.

CHAPTER II

FINANCIAL ADMINISTRATION

CONTROL AND SUPERVISION

Centre of Financial Control. For a better understanding of the extent of and limits to central financial control in New South Wales it is necessary to note the two distinct divisions through which State public finance is conducted. One of these divisions consists of Ministerial departments; the other encompasses a variety of statutorily created authorities in the form of Boards, Commissions and Trusts. Public departments are the older type of organisation, more closely linked with the traditional forms of governmental finance than is the comparatively recently developed statutory authority type. Since statutory authorities are set up for the conduct of extra government activities, most often of a business character, they follow to a degree the methods of private commerce and industry, blended with those belonging essentially to government finance.

Differences in financial practice between public departments and statutory authorities are discussed later in the chapter dealing with the organization of State business enterprise. At this stage, brief reference may be made by way of contrast to the position of each in relation to the system of central financial control. A statutory authority is, as the term indicates, a creation of Parliament with a legal status derived from the Act by which it is created. It is in itself a unit of financial administration, not necessarily dependent upon appropriations for the means of carrying on, but possessed rather of powers of financial management to the extent conferred by its statutory charter. Departments on the other hand have no legal status. They are not referred to in financial enactments, and in a constitutional sense they are merely organization units delineating the functions and responsibilities of individual Ministers. They are tied to the Treasury through the system of Ministerial allegiance to Cabinet and the acceptance in turn by Cabinet of the principle of central financial control through a finance Minister.

So far as departments are concerned this traditional concept of central authority holds good in New South Wales. "The primary object of the Treasury . . . is to complete and secure the

control of Parliament over the public expenditure, and to maintain financial order throughout the service. The Treasury is the central financial authority of the State, and all important changes in financial administration should either have its prior authority or at least be brought directly to its notice." [10] While the Treasury in New South Wales, carrying out the function thus described, stands at the centre of the whole financial organisation, the thread of control over departments is stronger than that reaching out to statutory bodies. The Treasury may direct, guide and if necessary veto the financial actions of departments but its right to any such course of action in relation to a statutory authority prevails only within limits. The financial relationship between the Treasury and statutory authorities is nowhere expressly defined. It rests rather on understandings whereby the Treasury exercises a watchfulness over the actions of statutory authorities for their bearing upon the general State finances. Thus the Treasury may interest itself in the rating and price charging practice of public enterprises; as the budget making authority it determines allocations of loan funds to them for capital purposes; it is vitally concerned as to their ability to recoup State general revenues for the portion of public debt invested in them, and proposals for subsidising their operations may create a need for Treasury investigation of their financial affairs. In matters outside the scope of these overriding considerations statutory bodies rest on their own powers and although policy in the State is to make the bodies subject to direction and control of a Minister of the Crown they do not as a rule come under close Treasury control, especially in matters of detail financial practice.

Treasury Organisation. The methods by which the State Treasury aims to discharge its obligations of financial supervision are in some major respects relatively recent in origin. For more than a quarter of a century after Federation, the Treasury was content to rest on practices that belonged to the Colonial era. It remained an accounting as much as a financial centre, somewhat remote from departments and concerned too greatly in matters of minor detail associated with the actual collection and disbursement of public funds. In later years many of these detailed processes have been passed over to departments and the Treasury has changed to an office of controlling record. A specialised bureau of investigation has been grafted into the organisation for detailed

---

[10] A.J.V. Durell, *Parliamentary Grants*, p. 241.

study of matters affecting financial policy, budget making and, more especially in recent years, the tendentious course of Federal and State financial relationship. In its present form the Treasury consists of two broad functional divisions—one, the budget branch, dealing with policy determination and budget management, and the other, the accounts branch, concerned with financial administration and the control of the accounting machinery of the public service.

While the Treasury in a constitutional sense is simply a department of the State with no more legal status than the other departments, the financial powers which it exercises give it a position of pre-eminence. At its head is the Colonial Treasurer,[11] a Minister of outstanding Cabinet prestige. Its chief officer is a public servant of senior status amongst the various departmental executives of the Public Service. The authority exercised by the Colonial Treasurer through the Treasury is derived from long constitutional usage and from many statutes whereby special powers are conferred upon him. He is the financial member of the Government and the responsibility of the department which he administers is to control the whole range of government finances. More often than not in New South Wales the offices of Premier and Treasurer are assumed by the one Cabinet Minister and this practice has tended to add greater strength to the already well established Treasury financial leadership.

Functions of the Treasury. Despite the shift of detail collection and expenditure accounting responsibility to departments, the Treasury remains a major departmental agency directly administering a wide range of spending votes and with a large part of the financial machinery of the State exclusively under its direction. The Treasury is the repository for the working funds of most of the State's business and other statutory undertakings. It stands in direct relationship with the Commonwealth for the receipt of all Federal grants and, broadly speaking, most of the tax revenues to which the State still has access are either collected by the Treasury or by its sub-departments. The Treasury manages the public debt.[12] It controls the cash balances and in it resides the responsibility for maintaining cash resources at a level sufficient to provide for the day-to-day commitments of the Government. The Treasury is the State's budget making authority. No department (assuming that circumstances are deemed to

---

[11] Adopted originally when New South Wales was a Colony, the term Colonial Treasurer remains in the Constitution Act and is still used in State statutes.

[12] See Chapter XII for a description of the State's public debt organisation as now regulated by the Financial Agreement with the Commonwealth.

warrant it) may incur an extra budgetary charge without obtaining Treasury approval in the first instance.

Although the real power of approval or veto is in the Cabinet and the ultimate authority is Parliament, the influence of the Treasury is to be seen in the practice by which financial proposals are submitted for its examination before they are dealt with by either of these bodies. The annual expenditure estimates are critically reviewed by the Treasury prior to presentation to Parliament, and no departmental project containing substantial financial implications would be approved by Cabinet unless it has been subjected to the same close consideration. Nor does supervision by the Treasury cease when expenditure projects, whether set down in the estimates or put forward by departments, have been sanctioned by proper authority. The Treasury is concerned in the execution of the projects to the extent of seeing that they are carried out in accordance with approval and within stipulated expenditure limits. Moreover, as approvals are contingent upon the availability of funds, the Treasury responsibility is to regulate the incidence of expenditures so that they will be kept within the day-to-day produce of the public receipts. Necessarily the Treasury possesses a right, which is essential to the exercise of this responsibility, of discrimination in the allocation of funds for expenditure purposes, and it is entitled to be kept apprised by departments of all substantial commitments, whether entered into or contemplated.

Authority over Personnel and Methods. It is the prerogative of the Governor to appoint responsible Ministers of the Crown but appointments to the permanent Public Service require the approval of the Governor-in-Council. In laying down this direction the Constitution Act adds a proviso that it is not to extend to minor appointments which by any Act or by order of the Governor-in-Council are vested in heads of departments or other officers or persons. Hence there exists in the State an extensive services personnel appointed by Ministerial authority or by heads of statutory corporations.

For the recruiting, staffing[13] and control of the general Public Service, however, the State has enacted a Public Service Act, the powers of which are centred in a Board of three members, with the Chairman holding an overriding authority. The Board is responsible to Parliament for the efficient and economical

[13] Appointments of officers to the Parliamentary establishment are not covered by the Public Service Act. Such appointments are made by the Governor on the recommendation of the President of the Legislative Council in the case of that chamber and on the recommendation of the Speaker in the case of the Legislative Assembly.

conduct of departments of State, and in order to ensure the establishment and continuance of proper standards it is required to keep constantly in touch with the work and personnel of departments. This obligation of departmental inspection devolves upon members of the Board personally so far as is practicable, but in carrying out its inspection responsibility the Board is assisted by a number of Inspectors acting under its direction. It also co-opts the services of standing committees, one of which, composed of its own representative and representatives of the Treasury and Auditor-General, is concerned with accounting organisation and practice. It is the function of this Committee to study in detail and report upon matters referred to it by the Board.

In the ultimate the means of controlling departmental establishments rests with the Treasury in as much as the carrying out of staffing proposals is contingent upon provision of the necessary funds. The Public Service Board, however, is the recruiting authority, and recommendations upon which the Executive Council acts in making appointments or in filling vacant positions in the permanent Public Service emanate from it. Of itself the Board may make temporary appointments.

Except where governed by awards of the Arbitration Court salary rates are determined by the Board, which may enter into agreements with groups of officers for this purpose. The Board is the authority for determining standards of an incidental character, including payment for extra work, travelling expenses, absences of officers from duty and special kinds of allowances. In addition to measures relating directly to personnel it possesses a wide regulatory power in relation to the maintenance of discipline, order and economy throughout public departments, and also over measures for the procurement and custody of stores and materials.

Check and Safeguard.

The Office of Auditor-General. In the same exclusive manner that the overall responsibility for the finances is assigned to a special organisation in the shape of the Treasury, there exists another section of the financial order wholly devoted to check and safeguard. The principal checking agency in the State system is the Audit Office and the officer in whom the responsibility for check is centred by Parliament is the Auditor-General. In New South Wales, as in the case of the remaining States and the Commonwealth, the office of Auditor-General exists apart from the executive and administrative bodies. It is constituted under the Audit Act which empowers the Governor to make the appoint-

ment and provides that, subject to a compulsory retiring age of sixty-five, the Auditor-General is to hold office during good behaviour and that he may be removed only by the Governor upon the address of both Houses of the Legislature. The Act expressly debars the Auditor-General from membership of the Executive Council or of any Parliament either of the Commonwealth or the State.

In New South Wales the office of Auditor-General was created in the early days of the Colony but it began to emerge in its present form with the coming of responsible government. Originally the audit of the public accounts was conducted in accordance with instructions issued by the Imperial Government. The Auditor-General was a member of the Legislative Council. Upon the introduction of self-government in 1856 the office was made non-political, but for a number of years afterwards audits were carried out on principles laid down by the Executive Council. It was not until 1870 that the powers and duties of the Auditor-General were dealt with by Parliament. An Audit Act passed in that year was the forerunner of the wider enactment of 1902 which has since provided the machinery for audit of the public finances.

The Audit Act, as so termed, is as much a measure for the conduct of the finances as for their audit. In it the Legislature has set out measures designed to ensure the proper accounting for public receipts and payments, the custody of government funds and the regular presentation to Parliament of accurate statements of financial operations. Linked with provisions to such ends are those for check and audit whereby the office of Auditor-General is constituted and the functions, powers and responsibilities of the office are defined.

The Audit Act of the State as it now stands is much the same as when enacted half a century ago. Such amendments as have been introduced have been concerned only with the removal of provisos that have outlived their usefulness, or with alterations to the machinery of public accounting set up by the Act. The long vogue of the main structure of the legislation may seem strange in face of the evolution to present day professional auditing practice, but it could perhaps be attributed in large measure to the traditional regard for the theory of Parliamentary financial control which a governmental auditing statute primarily is designed to maintain. Necessarily the State's Audit Act, like similar enactments elsewhere, falls far short of a complete audit code. For its successful application to the operations of public finance the Act depends in large measure upon recognition throughout agencies of government of the status of the Auditor-General as

an officer of Parliament and of the function of audit in the general scheme of Parliamentary financial control.

Powers and Responsibilities of the Auditor General. In carrying out his functions and responsibilities the Auditor-General is assisted by a staff of officers appointed by process of the Public Service Act and subject to similar conditions of employment as other members of the permanent Public Service. Salaries and expenses of the office are met from annual votes out of the Consolidated Revenue Fund which in turn is recouped part of the cost by means of audit fees charged against business undertakings and other statutory bodies. For the purposes of the Public Service Act the Auditor-General is declared by that Act to be a Permanent Head and thus may exercise the authorities and discharge the responsibilities of a head of a public department in manner laid down by the Public Service Act and Regulations or as delegated by the Public Service Board. But in any matter connected with his audit responsibilities the Auditor-General exercises an exclusive administrative control for which he is responsible only to Parliament.

Apart from the staff of officers assigned to his department the Auditor-General is empowered by the Audit Act to appoint any officer in the Public Service to inspect, examine and audit any books and accounts of accounting officers, or examine or make inquiries with respect to any public stores under the control of the State. The enabling section goes on to say that such appointees shall report to the Auditor-General.

In principle the powers intended for the Auditor-General by the Audit Act are such as will enable him to carry out an effective audit of the Government's accounts, including annual statements prepared by the Treasury, to observe whether the law governing the finances has been upheld and to report to Parliament accordingly. In order to inform and satisfy himself upon any matter the Auditor-General may address such queries and observations to the Treasurer and any officer concerned with the receipt or payment of public moneys and call for such accounts, vouchers, statements and documents and explanations as he may think necessary. Should it appear to the Auditor-General that there has been wilful or negligent omission to collect public moneys, or other prescribed forms of default, defect or irregularity, the Auditor-General is to disallow the accounts. He is to surcharge any person associated with public receipts or payments, in manner set out in the Act, who appears to be in default for deficiency or loss.

Before invoking this power of surchage the Auditor-General

is obliged on grounds of natural justice to seek an explanation from the officer concerned and to weigh this explanation in formulating his opinion as to whether there has been default. He may revoke a surcharge only if it has been issued in error. The obligation of enforcing a surcharge devolves upon the Treasurer after notice by the Auditor-General but, since the extent of the loss of funds in any case under surcharge is not necessarily the measure of the negligence, the officer concerned may appeal to the Governor who, after such investigation as he considers equitable, may make an order directing relief of the applicant wholly or in part.

Authority to disallow an account, although expressly conferred only for exercise in conjunction with the surcharge power, is not necessarily confined to cases involving issue of a surcharge. All deficiencies or losses through default or impropriety do not in fact attract the surcharge provisions, even though they may in the judgment of the Auditor-General call for disallowance. The general power of disallowance is essential to an effective audit and, moreover, it is to be read into the Audit Act by consequence of provisions, apart from those relating to surcharge, whereby the Auditor-General may pass and allow such accounts as have been found correct and proper. Hence he may not pass and allow accounts found to be otherwise; he must disallow them. A clear distinction has therefore to be drawn between the surcharge and disallowance function. In the case of the former, the course of ensuing action is charted by the Audit Act, but no such guide is given in relation to disallowances. Here the Auditor-General is obliged to rest on his report to the Treasurer or other administrative authority or, in the ultimate, upon Parliament, for rectification of the matter. The surcharge obligation is distinguished by its emphasis upon the consequences of official default, in that the person responsible may be required to make good a loss. It is, therefore, in the nature of a penal process, given effect in quasi-judicial manner. The disallowance power, on the other hand, need not of itself touch the question of personal liability but it is intended essentially as an aid to audit and administrative probity, in that it is a means of attracting attention to the need for correction of some financial irregularity or abuse.

Parliament, looking to the Auditor-General to apprise it of all matters affecting its control of the purse, has laid down the essential features of his obligation to examine and report in the interest of this control. Before moneys can be withdrawn from the Public Banking Account the Auditor-General is to certify to the Governor by warrant that the purposes for which they are to be applied, are within the scope of appropriation. He is bound

to submit a report to Parliament each year upon the finances. While it is necessarily his responsibility to acquaint Parliament of financial irregularities, in a sense he is also the guardian of the statute law concerning the finances, in that he is obliged to state in his annual report full particulars of every case within his notice of a nature touching upon the public accounts in which the provisions of any statute have been varied in execution or departed from.

Aside from some minor arrangements for pre-audit the system followed by New South Wales is one of post-audit, conducted either continuously or at intervals according to the size of the accounting organisation concerned. While the Auditor-General may examine the accounts of any accounting officer whenever he sees fit or whenever required by the Treasurer to do so, the Audit Act in laying this down requires that examination be carried out if possible annually. The result of each audit is to be reported to the Treasurer. Thus the Auditor-General is subject to a two-fold reporting obligation, for as already observed he is required also to submit an annual report to Parliament. A number of points of difference between the two obligations may be noted. So far as concerns reports to the Treasurer the Auditor-General is not subject to any time limit, the accounts to be reported upon are not defined nor is the subject matter of reports statutorily prescribed. On the other hand, while the Auditor-General may report to Parliament at any time according to his judgment of the urgency or special nature of a matter, he is under obligation to report within a fixed period upon the Public Accounts of each year. He may then treat of any subject of which he feels Parliament should be acquainted, but is expressly required to deal with a number of subjects mentioned in the Audit Act and to certify to various fund operating statements. The annual report to Parliament is intended to cover the whole range of the Treasurer's Public Accounts and is in fact a report upon the financial record and actions of the Executive including the Treasury itself.

Implied Limits to Audit Authority. While the duties and powers of the Auditor-General are very wide the terms of the authority upon which that officer rests are not so precise that they indicate the course of audit action in every set of circumstances. Broadly, however, the Auditor-General cannot interfere in matters of administration, nor can he question policy. His duty is to report the facts. Whenever in his view the actions of administration are wasteful or harmful in their financial consequences he may point this out. Just at what stage criticism is called for and to what extent this criticism, having been expressed, should be continued are matters for the judgment of the Auditor-

General. He cannot enforce his view upon an issue, but having treated with a department in connection with an irregularity or abuse he may not (unless the matter is rectified) let it rest there. He must bring it to the notice of the Treasurer and if need be before Parliament.

The Auditor-General is empowered by the Audit Act to make extracts from any book or document or record in any public office. His right of access to the books of accounting officers rests on regulations rather than on express wording of the Audit Act. To all intents and purposes, however, the obligation of audit carries with it the right of recourse to all the means necessary for the discharge of the obligation, and by long standing practice the status of audit is accepted accordingly. An accounting officer could not refuse the Auditor-General access to books or documents unless supported in his attitude by legal provision or unless he is able to show that examination of any such records is not relevant to audit responsibility.

In discharging his obligation to check collections of public revenue the Auditor-General may call for returns and assessments grounding imposts such as taxes, fees, etc. Audit authority to check and question assessments depends upon the nature of the law surrounding the assessments, particularly the conclusiveness or otherwise of the powers conferred upon the assessing authority. This may be a matter of legal interpretation or of public policy. It is not a function of the Auditor-General, however, to review the exercise of statutory discretions or the workings of technical appraisals which audit officers may not be expected to be competent to check or criticize. Following determinations arrived at by the competent authority the audit responsibility is to check the proper recording of the determinations and the collection in due course of the revenue or the faithfulness of the expenditure involved.

Range of Government Auditing. Stated broadly the purposes of governmental auditing are to secure that expenditure is limited to the objects for which Parliament has granted money, that sanction of the responsible authority has been obtained, that the terms of any statutes relevant to the expenditures have been duly observed, that public revenues are duly collected and that the departmental accounting is accurate. The four first named purposes are directly associated with Parliament's control of the purse and they typify the peculiar responsibilities of the Auditor-General as the guardian of this control. Less intimately related to the principle of Parliamentary control and more of general audit import is the last named function of checking the accuracy of the accounting. This involves the vouching of receipts and payments, the review of departmental accounting systems particu-

larly as to internal check methods, the detection of fraud and irregularity, the examination of cash and security balances, and the check of accounts for stores and other public property, including their acquisition and disposal. In determining the method and extent of audit procedures the Auditor-General is guided partly by statutory prescription and partly by what is deemed to be standard or reasonable audit practice. Unless directed otherwise by statute, he is entitled to rely on internal check systems when such are considered to be sufficient, confining his own examination to tests and sampling.

The obligation of the Auditor-General in relation primarily to the governmental accounts of the State derives from the Audit Act which defines the term "accounting officer" and provides for audit of the accounts of officers as so defined. The definition, however, is so wide that it embraces activities beyond the governmental sphere and thus transactions of an extra-governmental character, including those relating to industrial, commercial, banking, insurance and public utility undertakings of the State may be audited pursuant to the Audit Act. Usually, however, the acts constituting these undertakings provide expressly for audit, and for the more effective exercise of audit responsibility many of them confer upon the Auditor-General the general powers of the Audit Act.

So also the accounts of community services such as city water supplies, by direction of their governing enactments, come under audit by the Auditor-General. The State Audit Office is not concerned, however, with the audit of the accounts of local government authorities operating under the Local Government Act except that the Auditor-General may in terms of that Act be appointed auditor by the Council of the City of Sydney. The Marketing of Primary Products Act makes the Auditor-General auditor of the accounts of marketing boards functioning under it and the Trustees Audit Act provides for governmental audit of the accounts of a number of trustee, local and other prescribed authorities when the Treasurer or other Minister so directs. Several audits of an individual character such as the University of Sydney also are performed.

It is as a consequence of the expansion of State enterprise beyond the purely governmental sphere that the office of Auditor-General, while yet retaining its traditional association with the system of Parliamentary financial control by which it is best known, now extends widely into the field of general audit practice. In no case are the detail procedures for the audit of extra-governmental enterprise laid down by the controlling statutes, but the checks to be carried out necessarily are such as will enable the Auditor-General to establish that the governing law has been

observed and to certify to the financial position of each activity as shown by its annual statements of account. Although not statutorily required to do so it is the practice of the Auditor-General in New South Wales to report upon the finances of public business enterprises and other corporate bodies when presenting to Parliament his annual report upon the Treasurer's Public Accounts.

Public Accounts Committee. The State's Audit Act, following English practice, provides for the constitution of a Public Accounts Committee. This body consists of five members of the Legislative Assembly appointed by vote at the commence-ent of the first session of each Parliament. Its duties are (1) to inquire into and report to the Legislative Assembly upon any question which may have arisen in connection with the Public Accounts and which may have been referred to the Committee, either by a Minister of the Crown or by the Auditor-General or by a resolution of the Legislative Assembly, and (2) to inquire into and report to the Legislative Assembly upon all expenditure by a Minister of the Crown made without Parliamentary sanction or appropriation. Parliament is to be furnished each year with a report of the Committee dealing with matters submitted for its inquiry. In this report the Committee may lay before Parliament suggestions that may appear desirable for the better conduct of the public business or for the keeping of the Public Accounts.

The Public Accounts Committee does not form part of the executive government but on the contrary the acts of the Executive may come under its examination. While it cannot, therefore, suggest financial policy it can review the effects or the manner of carrying out policy. Stated broadly the underlying purpose of the Committee is to assist Parliament in its deliberations upon matters of financial importance. The prestige possessed by the Committee as a Parliamentary body could give force to its pronouncements, particularly when it deals with financial procedures or contentious questions (such for example as might arise between the Auditor-General and an administrative department), referred for its inquiry and report.

It will be seen that, while the function of inquiry and report upon unauthorized expenditures is mandatory upon the Committee, its activities otherwise extend only to such matters as might be referred to it. This lack of authority to initiate inquiries need not detract from the Committee's usefulness, for in the range of authorities which may refer matters to it—consisting of the deliberate body in the form of the Legislature, the Minister representing the Executive, and the Auditor-General as an independent checking authority—there exist all the means of permitting a wide range of inquiry and report.

Chapter III.

BUDGET SYSTEM

Scope of State Budget Practice.

General Considerations. The principle of Parliamentary control of the purse and the traditions that surround the principle are well known. Parliament, apprised of the amounts required to meet the expenditure obligations of the Crown, firstly approves of the expenditures, and next sanctions the fund raising measures put forward by the Government. Parliament votes the money to the Crown for disbursement through the responsible Ministers of the Crown. For assurance that the funds are raised and expended in the manner approved, it relies on well established formalities and safeguards carried on through the various executive, administrative and checking agencies referred to in the preceding chapters.

Although the word purse as applied to constitutional finance is symbolic of the whole extent and ramifications of annual income and outgo, it cannot be said that Parliament nowadays directly exercises its control in this all embracing fund raising and appropriating sense. For one thing, in New South Wales as elsewhere there has evolved, for the better financing of public business enterprise, a distinct code of financial procedure under which the managerial authorities are not obliged to account to the general revenues for their receipts, and may regulate expenditures, according to operational needs, without recourse to votes of the Legislature. Again, Parliament has for long permitted the practice of spending by the Executive beyond the plan approved in each year's Appropriation Act. Parliament does not require the submission of supplementary estimates in advance of these spendings, but relies rather on their separate accounting under the heading of Payments Unauthorized in Suspense for its notice and sanction after the close of the year. Finally, as already observed, State Legislatures today cannot be said to control the purse in the historic meaning of the term because the substance of taxation power has been taken away from them

by the Commonwealth, exercising its superior powers under the Federal Constitution.

Measures for financial control are cyclical in their operation. They commence with the presentation by the Government of a budget. Then follows a review by Parliament of the budget proposals and in sequence their approval and execution. In execution the budget involves a series of formalities and procedures all intended to ensure that the financial plan which it embodies is carried out in the manner approved. The practices linked with the presentation, consideration and approval of the budget constitute a large part of the whole financial structure, and indeed, because of the wide meaning which the word budget has acquired in modern government, it is appropriate and not unusual to distinguish these practices in their entirety by the term "budget system".

If the importance of public budgets in popular estimation is to be measured solely by their tax raising proposals (as in fact is largely the case) a shift of attention from State to Federal budgets in Australia, manifest over recent years, is easily understood. While this change is to a large extent a natural consequence of the growth of a sense of nationhood, the development of the federally fostered social welfare state and the transcendent importance of the Commonwealth budget as an instrument of economic regulation, it is explained in large part, however, by the present day centralization of tax resources in the Commonwealth to the exclusion of the States. The Federal budget has expanded at a rate vastly in advance of the States, and its money content is now double that of all other Australian governments combined. So also public attention has been focussed on the Federal scene to an increasing degree. The weight of State financial needs falls upon the citizen mainly through the Commonwealth tax raising structure, and State budgets are now apt to attract notice most for their business revenue and expenditure proposals. In recent years particularly, the forces of inflation have given special stress to business undertakings in the budget on account of the impact of their scales of fees and charges upon the general economy.

Of the budget itself in State finance it is to be observed that it is not based on any fixed statutory prescription. The idea of a budget conforms to the doctrine of executive responsibility to the Legislature in Parliamentary government, and some such proceeding is elemental in any system of sound financial conduct. On the other hand while many of the processes surrounding the budget are based, like that instrument, on custom, in the main they are

prescribed by statute or other written rule. Outstanding amongst the statutes which enter into the budget system in New South Wales is the Audit Act which sets out the law governing Parliamentary appropriations, the withdrawal of money from the Public Account, the accountability of the Treasurer and other Ministers and the audit of public receipts and payments. Numerous other statutes including the Constitution Act, Supply Acts, Appropriation Acts (Revenue and Loan), and the Public Service Act have their place in the system.

The State budget, as it is commonly understood, is concerned with the Government's revenue fund raising and spending proposals. It is, therefore, essentially a revenue budget. In modern writings upon public finance some emphasis is laid upon the importance of capital transactions in relation to public budgeting more especially in an economic sense. It is held that budgets should be divided into two sections, one dealing with revenue and the other with capital receipts and payments. Operations of a government, however, are not wholly susceptible of division in this manner. It would be difficult to lay down any precise rule of deliniation between capital and revenue in public finance, and budgets framed to give effect to the distinction could scarcely maintain consistency of treatment under changing circumstances from year to year.

In New South Wales what might be regarded as the capital budget makes up another and distinct phase of Parliamentary deliberations. This phase consists of the presentation of the Loan Estimates, their review by the Legislature and in due course their enactment. While customary practice makes the submission of the Loan Estimates one of the annual processes of government this rule of annuality has not the same importance as attaches to operations on revenue account. Nor is the term "budget" commonly applied to the documentary presentation of the Government's loan raising and spending proposals. Nevertheless the processes by which the estimates are submitted, adopted in a Loan Appropriation Act and reflected in the ensuing operations on a General Loan Account are all part of the budget system.

State Practice and Modern Budget Standards. The fundamentals of orthodox budget practice will be found to exist in the State. Thus the budget is in one sense a document, in another sense a forecast and in a third sense a plan. As a document the budget is a set of papers amplifying the Government's report to Parliament upon the finances. In its documentary essentials it sets out details of financial operations, actual for the past period and in prospect for the next period. As a forecast it shows the

amounts of revenue which the Government expects to receive. As a plan it projects the sources from whence receipts are to be obtained and, in itemized detail, the purposes upon which they are to be expended. Because the plan is the dominant feature it is as such that the budget is most commonly regarded.

Beyond these basic elements, budget practice in New South Wales does not reach the objectives of comprehensiveness and unity widely put forward as the criteria by which government budgets may be judged. In the past quarter of a century several changes have marked the scope and form of the State's budget, some aimed at these two ideals, while others, influenced by practical considerations, have tended away from them. In earlier years when revenue operations formed one budget fund the account of this fund approached comprehensiveness in its presentation of the Government's income and outgo. Since 1928, however, the finances of public utilities, previously absorbed in the Consolidated Revenue Fund, have been conducted on the self liquidating principle, separate from that fund. Although the utilities remain in the budget, the accounting treatment of their transactions on an income and expenditure basis, contrasting with the receipts and payments system retained in the Consolidated Revenue Fund, is not conducive to budget unity. Moreover, the "outside the budget" method of financing for a wide range of additional public trading enterprises that has grown up in recent years has detracted progressively from comprehensiveness in budget practice.

In the New South Wales system the processes of Parliamentary deliberation that follow the presentation of the estimates of revenue receipts and payments and fructify in the passing of the annual Appropriation Act are confined to the Consolidated Revenue Fund and several public utilities of a major character. The State in effect sets a limit to the budget process and beyond that limit it is content to rest on outside the budget methods of financial control. It is no easy task to devise a method whereby the heterogeneous elements which make up the finances of the modern state can be assembled in common form within a single budget document. The problem, for the most part, centres about the public business enterprises, each an independent administrative unit, detached from the general finances. Operations of a public business enterprise are not easily adapted to budgetary formula and control in the manner of purely governmental operations. The latter lend themselves to forecasting and planning, to the fixation of expenditure allowances and to the assembly of data upon which operations can be grounded for a period by means of an Appropriation Act. A public business enterprise of the type

carried on in a major way by the State would be hindered were it restricted to estimates as set down in the annual budget; it must regulate its commitments in accordance with operational needs as they arise. Any system of budgeting and voting financial allocations for a public business enterprise is conditioned by this requirement.

Together with transactions of a variety of public trading undertakings, certain other receipts and payments of a revenue character are excluded from the State's budget document and from the attendant legislative processes. These relate to the so called assigned revenues. Foremost amongst them are the proceeds of road motor taxes, disposal of which is sanctioned by permanent statute rather than by annual appropriations. Here financial policy in the State accords with wide practice in government, for motor vehicle taxes have for long been regarded as a specially devised fiscal means for highway construction and maintenance. Hence the roads statute provides for their assignment to roads funds and for their spending therefrom, without further appropriation. Again, since it is usual in the State system for a number of federal grants-in-aid to find their way into Trust Accounts (designated Special Deposit Accounts), disbursements of the grants also are excluded from the budget. Withdrawals from Special Deposit Accounts are regulated by the constitution and purpose of each such account and do not come within the scope of the annual budget approval and review.

Budget Content. The New South Wales budget owes much of its present form to the recommendations of a committee set up a quarter of a century ago to review the State's budget practice. Two changes of a major character marked the document as a result of the committee's deliberations. Firstly, departmental estimates were standardized in itemized detail under three broad headings of (a) salaries and like charges, (b) other standing charges more or less common to departments and (c) expenditures peculiar to each department. Secondly, operating statements for government trading concerns, the finances of which did not form part of the budget proper, were set out in annexures. Of these two features the first still remains but the second has since been discarded.

The budget document nowadays presented to Parliament consists of two parts, one the budget papers, as so termed, and the other a copy of the Treasurer's speech. In their revenue content the papers are concerned with operations of the Consolidated Revenue Fund, the rail and road transport undertakings and the port of Sydney authority. There is set out also an account

of the Closer Settlement Fund.[14] Additionally, Parliament is furnished with the details of payments made from a round sum voted in the previous year for supplementary and emergency spendings from Consolidated Revenue, and also with particulars of expenditures made from the several budget funds during the same period in excess of or without Parliamentary appropriation.

Highlighting the budget papers is an aggregate statement which combines operating results of the Consolidated Revenue Fund, the rail and road transport undertakings and the port of Sydney authority. From this aggregation there emerges a net final figure of estimated surplus or deficiency for the budget year contrasted with the actual outturn for the last period. The condition of the finances is thus appraised. To all intents and purposes, the result shown by the several activities brought together in the aggregate budget statement is the measure of State financial welfare from year to year. Moreover this combination of a number of separate and designedly self contained divisions of State public finance gives a semblance of unity to the budget.

Following the aggregate statement, the budget papers set out in summary form receipts and payments of the Consolidated Revenue Fund and, in turn, income and expenditure of the business undertakings. This information is next succeeded by the detailed estimates of the Consolidated Revenue Fund—the receipts arranged under several group headings and the payments according to the Ministerial departments through which they are to be met.

The Estimates.

Treasury Control. For the compilation of final figures of estimated revenue the State is dependent in large measure upon Commonwealth determination of grants payments, more especially the income tax grant. These are usually the outcome of discussion between the Commonwealth and the States, often conducted some time after the commencement of a financial year. The presentation of the State budget follows. While external circumstances may thus delay this event for one quarter or more in each financial year the detail preparation of the budget commences at a much earlier stage. It would be difficult in fact to trace any budget to its real beginnings because more or less throughout the preceding year

[14] See Chapter XIX. The Closer Settlement Fund operates on the self liquidating principle and its operations are not taken into account in the determination of each year's revenue surplus or deficiency. Expenditures from the fund, however, require appropriation by Parliament and are dealt with in the Appropriation Act.

matters likely to find their way into it are under consideration. During this period, however, the budget is a thing in embryo; proposals are noted for inclusion in the estimates but they remain in draft form until it becomes possible to examine them in the light of the possibilities of the next succeeding period. As this period approaches the preliminary steps are taken by the Treasury. In the first instance departments are asked to submit estimates of their revenues and expenditures. A general outline of the policy and procedure to be followed in compiling the estimates is conveyed to them and they are furnished with skeleton forms upon which the figures are to be returned.

All departments thus participate in the preparation of the budget in its early stages but the work of assembling the data and shaping it into a finished plan devolves upon the Treasury. The Treasurer acting on behalf of Cabinet and subject always to its over-riding direction is the State's budget making authority. The estimates furnished by departments are critically examined by Treasury officers, so that in their final form they are the estimates not of departments but of the Treasury. They may be considerably revised in the course of this review. In the first notice issued to them by the Treasury, departments may be asked to regard their original expenditure estimates as final, to estimate on the basis of minimum requirements and to submit explanations of new items or items which exceed the expenditure of the previous year. Nevertheless the original expenditure requisitions of departments are, in the eyes of the Treasury, of a preliminary nature. Despite injunctions to economy, expenditure ambitions here and there obtrude and the review of the estimates may in part resolve into a contest between the Treasury, holding tight the purse strings, and a department seeking to have them loosened. The duty of the Treasury is to review requirements in the light of their cost, first admitting essential needs and then other items according to their priority. Naturally the Treasury is influenced by a number of considerations, more or less rigid in their incidence, such as the general condition of the finances, the need for providing for requirements which have a background of government policy and the overall obligation to achieve a budget balance. Specific items may be struck off and the estimates may be returned for revision of bulk services. The ultimate amounts are usually the result of consultation between Treasury and departmental officers but should any matter remain unsettled despite these consultations it may be determined by agreement between the Treasurer and the Minister in charge of the department concerned. In the final resort it may be resolved by Cabinet.

Contrasted with expenditure, the estimates of revenue are different, both in nature and manner of treatment. They come before the Treasury at firm amounts and it is a matter for legislative rather than Treasury action should any expansion or contraction of revenue receipts be desired. True revenue budgeting aims at a precise statement of estimated amounts; it does not permit of under-allowances for the purpose of creating marginal reserves, nor should any hopes of fortuitous happening enter into the reckonings of budget officers. Strictly there are no rules capable of universal application when estimating revenues, and the budget maker must rely upon observation and study, upon the knowledge possessed by departmental heads of the trend of the revenues which they are collecting, and upon statistical appraisement of past results, particularly the more recent ones.

Apart from estimates of governmental receipts and payments those of the major business undertakings also enter into the budget plan. Expenditure estimates of business undertakings do not admit of detail scrutiny and check by the Treasury in the manner of the governmental section, nor can they be controlled to the same extent. Since the net operating results of the undertakings are vital to the budget balance it is with the estimated surplus or deficiency for each of the undertakings that the Treasury is most concerned.

Incorporation in the Budget. An aggregation of the revenue and expenditure estimates of the Consolidated Revenue Fund and the business undertakings provides the first indication of the budget outcome, whether a surplus or a deficiency. This balance is a commencing point for the formulation of the budget plan. Variations in the estimates may be decided upon according to the nature and extent of the balance. New measures for increasing the receipts of the Consolidated Revenue Fund or the business undertakings might be introduced into the plan. Naturally, however, any serious decline in the financial position making these measures necessary will have been apparent beforehand. Again a preliminary review of budget possibilities may suggest scope for reductions in State imposts, or in charges of business undertakings or for expansion in the governmental expenditure programme. Should it be apparent on the other hand that receipts cannot be made to balance expenditures the decision may be to budget for a deficiency and in that event arrangements for borrowings to make good the deficiency may enter into the budget plan. With the financial policy of the year finally determined one way or another the estimates are revised and adopted by the Treasurer. They are then ready for incorporation in the budget to be presented to Parliament.

Nowadays the skilled work of grafting the estimates into the budget is performed by a specialist Treasury bureau, the functions of which provide a wide field of investigation and study, directed not only to immediate questions of government finance but to general economic, business and financial conditions. The activities of the bureau include the examination of budgetary problems throughout the year, the reporting upon suggestions affecting revenue and expenditure, the making of recommendations thereon, and the collection and collation of financial statistics and budgetary data. It is scarcely necessary to say that the true worth of the budget and a great deal of the value of the budget system rests upon accuracy in the work of this bureau.

Form of the Estimates. Because the estimates are the essential content of the budget their detail arrangement is a matter of special significance. Parliamentary votes follow, in summary, their form. Later the Public Accounts of the Treasurer which are the standard financial reporting medium of the State show actual revenues and expenditures under the same detailed headings as used in the estimates. From the viewpoint of Parliamentary control of the public purse much of the utility of the budget is dependent upon the clarity and completeness with which the estimates give expression to every important aspect of the Government's financial proposals.

Since it is the Ministers of the Crown through whom Parliament votes the funds for the services of the State, estimates of governmental spendings are arranged primarily under the heading of the various Ministerial departments. These headings are in turn divided into sections, each representing a particular departmental activity. Further classifications occur within each section, one for "Salaries and Payments in the nature of Salaries", another for "Maintenance and Working Expenses other than Salaries" and a third for "Other Services".

This is the major classification followed uniformly throughout the estimates. The first two headings express the types of expenditure included within them; the third heading, meaningless in itself, is designed to segregate those expenses which are more or less peculiar to the particular function of each department. The universality of expenditures included under "A" and "B" headings permits of a common plan of classification amongst all departments. Thus "Salaries and Payments in the nature of Salaries" are subdivided—

A1 Salaries and Wages.
A2 Temporary Assistance.
A3 Allowances.
A4 Payments in respect of Leave on Retirement.
A5 Overtime.

while the component details of "Maintenance and Working Expenses other than Salaries" follow a like arrangement—

B1 Subsidiary Staff Charges.
B2 Expenses in Connection with Buildings.
B3 Subsistence and Transport Expenses.
B4 General Expenses.

and so on. By means of the standardized sub-headings, similar items of cost can be compared between departments and between periods. Furthermore the symbols are a valuable aid as mnemonics to departmental accounting officers in connection with routine bookkeeping procedures.

Expenditures grouped under the heading of "Other Services" are distinguished likewise by numerals but the diverse nature of the expenditure precludes any standardized form of symbolization. Each department has its own descriptive arrangement.

Budget and Extra-Budget Sanctions to Expenditure

Provisions for Interim Spending. Customary practice is to enact an Appropriation Act once each year, and that, following the presentation and adoption of the budget. The budget deals with the financial proposals for a complete year and the Appropriation Act signifies the legislative assent to the arrangements for a like period; by its scope and regular yearly incidence then, this enactment becomes known as the annual Appropriation Act. Strictly speaking, there is no statutory requirement for an Appropriation Act at yearly intervals, but the principle is well established in State constitutional practice. There need not, however, be only one such Act in any year. As a matter of fact public expenditures are sanctioned by a number of enactments which are for that reason Appropriation Acts, although not so termed. Outstanding amongst these is the Audit Act which provides for the appropriations necessary to meet the cost of public services for a fixed period after the commencement of each financial year. Next are those lump sum authorities, recurring almost from year to year, known as Supply Acts. Furthermore there are the permanent expenditure authorities, granted by special statutory provision as described in the next succeeding chapter.

It was envisaged by the framers of the Audit Act that some time must elapse after the close of each financial period before the budget for the new period would be formulated, considered by Parliament and adopted in the annual Appropriation Act. Provision for the carrying on of the services of the Government during this interval is inserted in the Audit Act in the following words—

"If before the close of any financial year no Act is passed granting and appropriating moneys out of the Consolidated Revenue Fund to meet

the requirements of the next succeeding financial year the Treasurer may pay such sums and make such advances to meet such requirements current and accruing subject to the following provisions:—

(a) The authority of the Treasurer shall cease upon the passing of the Appropriation Act for such next succeeding financial year, and shall not in any event extend beyond the period of the first three months of such year.

(b) Upon the passing of such Appropriation Act all payments made under the authority of this Section shall be regarded and treated for all purposes as payments made out of the supply granted by such Act under the divisions and heads of service appropriate thereto.

(c) The payments under the authority of this section shall be at such rates and shall not in the whole exceed such an amount as would be equivalent to the authorized expenditure under the Appropriation Act for a corresponding period of the immediately preceding financial year in respect of all salaries, pay, wages, allowances, contracts, supplies, services, rents, Treasurer's Advance, and other recurrent charges and of all ordinary contingencies of any office or department authorized by the Appropriation Act for such year and set forth in the estimates relating thereto.

(d) When the estimates of expenditure for such succeeding financial year have been presented to Parliament, and the rate of expenditure in such estimates is, in any case, lower for any service than the rate of expenditure authorized in the Appropriation Act for the last preceding financial year, the payments under the authority of this section shall not exceed such lower rates."

These allowances, although clothed with limitations, are effective as a means of enabling the Government to carry on during the first three months of each financial year. They permit of expenditures during that period solely on the normal services of government. New services must await the authority of a specific enactment.

Should the annual Appropriation Act not be passed before the termination of authority under the Audit Act it is necessary to obtain the approval of Parliament to further expenditures. This is done by means of a Supply Act which is a vote on account, as a rule similar in the form of its allowances to the temporary supply provisions of the Audit Act. It is common for expenditure authority under a Supply Act to be noted in a gross amount, to cover one or two months and to provide for detail services either on the lines of an equivalent period of the preceding financial year, or on the basis of estimates already presented to Parliament for the current year. A Supply Act may be framed, however, so as to provide for new services.

The annual Appropriation Act is the major expenditure authority for each financial year. It sets out allowances for the whole year in itemized detail, thus giving formal sanction to the services already incurred under Audit Act and Supply Act authorities and authorizing the Government's expenditure proposals for the balance of the period.

Enacting the Budget. As the Appropriation Act is the culmination of the budget process in Parliament the several stages of legislative formality leading to its enactment may be briefly outlined. The first of these stages is initiated by the Treasurer's budget speech upon which ensues what is known as the Budget Debate. In his speech the Treasurer reports upon the general state of the finances. He outlines the results for the past financial period and propounds the policy and proposals for the current budget period. These proposals are dealt with by the Legislature from two angles, one that it will allow them, the other, which is consequential, that it will provide the means necessary to carry them into effect. The proposals are considered then in two stages of Parliamentary procedure, known as Committee of Supply and Committee of Ways and Means, respectively. Dealing with the origin of the Committee practice in financial deliberations the Report of the 1918 Select Committee on National Expenditure, United Kingdom, had this to say:—

> "The Committee of the whole house on Supply . . . was established in the days of recurring conflict between Parliament and the Crown as a device to secure freedom of discussion in matters of finance. The debates in the House itself were recorded in the Journal which was sometimes sent for and examined by the King; and they were conducted in the presence of the speaker, who in those days was often the nominee and regarded as the representative of the Sovereign. By going into Committee under the chairmanship of a member freely selected the House of Commons secured a greater degree of privacy and independence."

In reality the division of budget proceedings into two separate committees has only a formal significance but as each committee is constituted of the whole House with wide scope for debate, opportunity is offered to individual members for examination and criticism of the finances. The estimates are dealt with in the Committee of Supply, and adopted by resolutions of that committee. In Committee of Ways and Means, resolutions naming the sources of the funds necessary to make good the supply are arrived at. The Government's proposals for raising money are also considered. Naturally the ordinary recurring revenues of government do not come under review, nor is it the practice, when the form and content of taxation remains unchanged, to re-enact specific taxation Acts. Should new money raising measures be intended, proposals to this end are dealt with first in Committee of Ways and Means. Later the various resolutions passed in the two committee stages are given statutory effect by the passing of the Appropriation Act and any other necessary financial enactments.

The passing of the Appropriation Act and attendant legislation signalizes the adoption of the budget by Parliament. Action then passes from the legislative to the executive and administrative phases.

Chapter IV.

EXPENDITURE ACCOUNTABILITY AND FINANCIAL REPORTING

Parliamentary Appropriations.

Types of Appropriations. "Appropriations" and "votes" are common expressions in government finance. Each term indicates the assent of the Legislature to an expenditure; the latter directly in its emphasis upon the aspect of a supply or grant, the former more perhaps in an oblique manner, in the sense that an appropriation is an allocation of a specific portion of the Ways and Means for the purpose of the supply or grant. Both in practical meaning and common usage, however, votes and appropriations are identical terms.

Appropriations (adopting for convenience that term) are of two kinds, annual and special. Annual appropriations are those which are enacted each year, which relate to the services of the year for which they are enacted, and therefore lapse at the close of the year. Special appropriations are those derived from a number of standing enactments which authorise continuing expenditures on the services named in the enactments without recourse to further appropriation. They are also known as permanent appropriations. Special, or permanent appropriations may be classified under two types, specific, and non-specific. With the first-named, a limit is fixed to the amount which can be expended either each year or over a prescribed period, so that any additional spending would require the authority of an Appropriation Act. A special appropriation is said on the other hand to be non-specific when no limit is imposed as to amount or time, for spendings under it.

The practice of specially appropriating the Consolidated Revenue Fund is resorted to on several grounds. For example, it is not considered in the best interest of the public credit that charges on the debt of the State should be subject to a vote of Parliament each year. In any event once loans are raised, interest has to be paid, and Acts governing the public borrowings there-

fore provide that interest and sinking fund payments are to be met as required, without further appropriation. The independence of the judiciary is deemed to demand that salaries of judges should not have to run the gamut of annual Parliamentary review. On similar grounds the salaries of the Auditor-General and members of the Public Service Board are specially appropriated. Again, as a gesture by the State to public officers in consideration of services rendered, retirement pensions are appropriated by the original pension approving statutes. Various other expenditures figure amongst the special appropriations, in some instances without any principle of intrinsic importance, except that a Parliament of a particular period has so willed and legislated. In New South Wales a large section of the total payments from the general revenues are provided by special appropriations, with interest and sinking fund charges on the public debt contributing in the greatest proportion. Although amounts estimated to be spent in a year under special appropriations are shown in the budget document they are excluded from the estimates upon which the annual Appropriation Act is founded. They do not come, therefore, within the same detailed review each year by the budget making authority, or by Parliament, as do annual appropriations.

Transfers between Appropriations. State practice admits of the use of several terms in referring to annual appropriations and their component parts. It has already been noted that the Appropriation Act is divided, as to allocations from the general revenues, into Ministerial divisions, each of which is made up of a number of sections representing the various departmental activities. The amount allocated to a section is the amount "appropriated" or "voted" for that section; by usage then, the total for each section as an element of the Appropriation Act becomes known as an "appropriation" or "vote". There are usually more than one hundred such sections, and to give them an accounting identity they are allotted numbers, the first, number one, and so on. These are known as item numbers, and the sectional appropriations which they represent come also to be called "items". Thus the terms "Appropriations", "Votes" and "Items" when applied to the Appropriation Act are, in fact, interchangeable. Only in relation to what are known as Sub-Items is there any clear delineation. These, as the name implies, are the subordinate details of itemized appropriations. Actually they do not appear in the Appropriation Act, but only in the Estimates, the understanding being that amounts appropriated in the Appro-

priation Act in totals are to be spent in the detailed or sub-itemized manner shown in the Estimates.

This, however, is not a hard and fast rule, and it can be departed from in manner laid down. Each annual Appropriation Act provides, in effect, that if the exigencies of the Public Service render it necessary the Colonial Treasurer or person appointed by him, may authorise the transfer of an expenditure authority from a sub-item to augment the authority on any other sub-item within the same sectional appropriation. It is not permissible for expenditures on services unprovided in the estimates to be introduced in the guise of transfers between sub-items, nor does the Treasurer's discretion extend to amounts for specific public works and for those more or less special expenditures classified under the heading of "Other Services". Again, a transfer cannot be effected should it result in an addition to any salary or wages, the amount of which has been fixed by law.

These allowances, limited as they are to routine departmental services, could and in fact do, result in considerable deviation in actual spendings from the precise details of the estimates. The allowances express the spirit in which Parliament approves the budget plan. It does not wish to trammel the Executive by insisting upon adherence to the plan in minute detail. On the contrary, the language of the Appropriation Act could be taken to convey a wish rather than a direction that sub-itemizations in the estimates be observed in actual spendings. It is all a matter of good faith between the executive and legislative bodies. The former is pledged to the estimates; but this pledge is subject to the understanding that within fixed limitations, details may be varied should circumstances render such variations necessary. Parliamentary sanction to the principle of transfers of expenditure authorities between sub-items is conditioned by the safeguard that transfers cannot be effected by spending departments willy-nilly. They must be authorised by the Treasurer or by some other person on his behalf.

Another type of transfer, wider in scope and of deeper significance than those between sub-items has also to be noticed. This type is sanctioned by the Audit Act and is therefore in the nature of a permanent authority, to which each annual Appropriation Act is subject. It relates to transfers between items. The Audit Act provides that should the exigencies of the Public Service render it necessary, the Governor may authorise the transfer of an unexpended authority under the head of any service for fixed establishments for the purpose of supplementing insufficient appropriations for other services, subject, however, to the same restrictions, as in the case of sub-item transfers, that no transfer

can be made either to or from an appropriation for a specific public work, and that an unexpended balance cannot be used to augment any salary or wages the amount of which has been fixed by law.

The Auditor-General is required to furnish Parliament with a statement showing all transfers of unexpended balances of appropriations made under the Audit Act. Parliament is thus made aware of departures from expenditure sanctions, but as the matters are brought to its notice *ex post facto* the procedure serves to maintain the form rather than the substance of Parliamentary control. An inherent danger in the principle of inter item transfers is in the potential benefit to the prodigal spending department, since such a department may be enabled to augment its expenditure authority at the expense of the one which has managed to keep its outlay below the limit set out in the estimates.

Non-Specific Appropriations. It is a universal principle and one recognised in the Constitution Act of the State that supplies are only to be expended for the particular objects approved by Parliament. Allocations submitted to, and sanctioned by the Legislature therefore should be definite as to amount, and specific as to purpose. A well established exception is to be seen in the voting each year of an Advance to the Treasurer, to be expended at the discretion of that Minister. The advance is included in the estimates as a means of providing for those expenses which cannot be foreseen in precise detail when the budget is brought down. It is the only allowance of its kind ordinarily vouchsafed by Parliament. There is no statutory basis for the advance; its amount, therefore, is not restricted to any fixed sum, but subject to the acquiescence of Parliament, it may be varied by the budget making authority from year to year.

The Advance to the Treasurer is not, as the term might suggest, a specific allocation of cash; it is simply an expenditure authority the same as any other such appropriation. It accordingly becomes an item in the Appropriation Act, classified under the Ministerial Division of the Treasurer. Charges against the advance can be authorized only by the Treasurer but all departments more or less participate in spendings from it. At the close of the financial year the unexpended portion lapses as in the case of other annual appropriations. Details of expenditures from the advance, arranged under the headings of the departments through which they were incurred, are set out in the Appropriation Act of the year next succeeding the one in which the round sum was voted. They are formally sanctioned by Parliament in the passing of that Act. Each annual Appropriation Act, therefore, deals with

the Advance to the Treasurer from two angles:—it approves of the purposes on which spendings were incurred in the previous year, and it provides a further round sum to meet unforeseen expenses for the current year.

Lapsing of Appropriations. The authority of an annual appropriation terminates, as already stated, at the close of the year to which it relates. This is a fundamental rule. It emphasises the true nature of an appropriation, namely that it is an authority to incur an expenditure should the need arise, rather than an express direction to spend. The rule means that unexpended balances of authorities are surrendered at each 30th June, that accounting processes relating to appropriations in operation during the year are closed, and that any unpaid liability on account of a service of the year must await the authority of the next succeeding year. Any credit—derived from a refund or repayment of an amount spent from an appropriation—which comes to hand after the close of the year is taken into the revenue fund as an item of public receipts.[15]

Legal Machinery for Public Expenditures.

The Governor's Warrant. While the authority of either the annual Appropriation Act, the Audit Act, a Supply Act or a permanent statute is the legal basis of all expenditures on the public services, other conditions have to be complied with before expenditure can be incurred. Firstly the withdrawal of moneys from the Public Account must be sanctioned by warrant of the Governor. This requirement is embodied in the Constitution Act and it is repeated in the Audit Act which also sets out the machinery of its operation.

The Treasurer is directed by the Audit Act to calculate, as often as may be required, the amount of money likely to become due out of the various Government accounts during a period not exceeding three months. He is to prepare warrants for the payment of the money and to transmit the warrants, signed by himself, to the Auditor-General, for certification. The responsibility of the Auditor-General in relation to a warrant is twofold. He is to ascertain whether the payment of the money for the services set out in the warrant has been authorized by Parliamentary appro-

[15] Credits to Appropriations are described as Repayments to the Credit of Votes. The rule of annuality introduces a distinction in their treatment, according to whether the credit occurs during the year of the appropriation or after its close. A repayment during the appropriation year becomes available for respending under the original authority. A repayment after the close of the year is not available for any such respending.

priation and that payment has not already been made. The Auditor-General is to certify accordingly. After certification the warrant is to be returned to the Treasurer who is thereupon to submit it to the Governor for signature. When signed by the Governor the warrant is the Treasurer's authority to draw upon the Public Account to the extent and for the purposes set out in the warrant.

A warrant is simply the legal expression of authority to the Treasurer to expend the sum mentioned therein on authorized services of the State. The warrant is not specific as to details but it is definite as to the total sum and the period in which this sum may be expended. At the end of the period the warrant lapses and a new one must be sought. Should the amount authorized in any warrant not be spent within the period the Treasurer is not debarred from again seeking warrant for the unexpended portion. Usually warrants are obtained at quarterly intervals but supplementary warrants might be sought at any stage, the essential determinant of the amount of any warrant being the estimated proportion of unexpended appropriations likely to be required for the public services during the period that the warrant covers.

Constitutional Significance of the Warrant. The Legislature in introducing the machinery of the Governor's warrant into the public expenditures gives recognition to the relationship between the Crown, Parliament and the Executive in a system of responsible government. Parliament, through one or other of the Appropriation Acts makes available to His Majesty the moneys necessary for the public services and these moneys can then only be expended by the Executive as and when authorized by the Governor as the representative of the Crown. The force of the warrant is in its restraint over the Executive because once the Treasurer pays to the Public Account all moneys received into the Treasury they are beyond his control until he receives the Governor's authority to draw out any portion. But the real significance of the warrant is in its potency as an instrument of Parliamentary control. In its essence it is based on statutes appropriating the public funds, and behind each warrant stands the Auditor-General, an independent officer of Parliament, whose certification as to the availability of the moneys in terms of the statutes is necessary to give the warrant legal force.

Nevertheless the warrant does not in itself provide an absolute control over the actions of the Treasurer. Banks keeping the Public Account are not obliged to enquire whether any cheque presented for payment is covered by a warrant and the Treasurer, therefore, is not debarred from drawing moneys from the account

should he desire to do so, or should circumstances be deemed to make this necessary. In practice payments made without Parliamentary appropriation, and without warrant recur from year to year.[16]

Ministerial Authorization of Expenditure. A second statutory requisite to the disbursement of public funds is derived from the Audit Act and, contrasted with the warrant prescription, is different altogether in its implications and purposes. Section 41 of the Audit Act provides in part:—

"(1) No accounting officer shall pay any account unless—

(a) he has ascertained that the provisions of this Act and of the regulations relating to the payment of accounts have been complied with; and

(b) the payment of the account has been authorized by the responsible Minister of the Crown of his department, or by some officer appointed by such Minister in that behalf: provided that in the latter case the officer shall not authorize payments to an amount greater than that specified by the Minister appointing him.

(2) No Minister of the Crown or person appointed by him as aforesaid shall authorize the payment of an account unless he has ascertained that the payment is authorised by law, or has been directly sanctioned by the Treasurer, and if chargeable on the Consolidated Revenue Fund or General Loan Account, is covered by Parliamentary appropriation.

The obligation of authorizing expenditure after it has been certified as correct by a departmental officer, is imposed on the Minister to whom Parliament votes the money, or his delegate, the latter usually an officer of standing. This statutory prescription is based on the principle of Ministerial responsibility and thus is intended as a safeguard over expenditures, in that those obligations of care and caution, which are inherent in the Ministerial office, must enter into the public disbursements. Ministerial authorization of payments is designed to secure that the payments, besides being sanctioned by law, are proper from the point of accuracy and faithfulness of the services for which they are made. The certification of every account as to these essentials is a prerequisite to authorization, and no accounting officer can legally pay any account until he has ascertained that all requirements, including its proper authorization, have been complied with.

Financial Reporting.

The Public Accounts. The Public Accounts are complementary to the budget. The budget is the financial plan of the year but the Public Accounts show the outcome of that plan.

[16] In New South Wales all such payments made in anticipation of Parliamentary sanction are submitted for validation in the Appropriation Bill for the next succeeding financial year.

Unlike the budget—which is based on convention rather than statute law, its form, matter and time of presentation not being subject to any rigid fixation—the Public Accounts are prepared by direction of a statute, their form is laid down and they have to be presented to Parliament by a stated date each year. At the expiration of the financial year the Treasurer is obliged by the Audit Act to prepare the Public Accounts and to forward them to the Auditor-General who is to transmit the accounts, certified and accompanied by his report, to Parliament. The several processes are governed by time limitations culminating at the close of the first quarter of the next year at which stage the accounts must be in the hands of Parliament. Should Parliament not be sitting the Auditor-General is required to post a copy together with his report to each member of the Legislative Assembly.

In their main content the Public Accounts follow the budget. They set out the operations of the Consolidated Revenue Fund, the Department of Railways, the tramway and omnibus services and the port of Sydney authority, singly and in combination, the combination statement giving the aggregate result of the year's revenue finances, whether a surplus or a deficiency. Following the presentation of the revenue statements the Public Accounts are devoted to the transactions of the remaining Treasury funds—trust, loan and miscellaneous—and finally to a statement of Treasury cash and security resources spread over all funds as at the close of the year. Statements of loan raisings, outstanding debt, and sinking fund operations also appear.

Cash Basis in Financial Reporting. New South Wales adopts a year as an accounting period and in common with the practice widely followed in public finance it accepts the difference between receipts and payments as the measure of general revenue welfare from year to year. Financial reporting so far as it deals with operations on the Consolidated Revenue Fund is therefore said to be on a cash basis but for business undertakings, including those incorporated in the budget, the income and expenditure accounting system is followed.

The report of the 1947 Committee on the form of Government Accounts for the United Kingdom is perhaps the most recent in explanation of the fundamental principle of accounting by cash receipts and payments in the purely governmental sector of public finance. The Committee stated (Page 11)—

"It is therefore timely to recall the constitutional principle lying behind these accounts. It is simply this: that the legislature, that is Parliament, provides year by year stated sums of money which are entrusted to the executive, that is the various Government Departments, to be spent

within the approved figures on stated purposes. Parliament therefore requires an assurance, when the year has ended, that the moneys have in fact been spent as authorized. Since Parliament provides cash, it is appropriate that the accounts submitted to it, and to its representative, the Comptroller and Auditor General, should also be on a cash basis. Indeed, for this particular purpose the cash basis is not only appropriate; it is essential having regard to the responsibility of Parliament for finding the money actually required to perform the multifarious service of government."

And at page 12 the Committee added:—

"The reasons for the cash basis of the Consolidated Fund are bound up with the history of the old struggles between the Crown and Parliament and of the control finally established by Parliament over the right of the Crown to raise money by taxes and to spend the money only on purposes approved by Parliament."

Apart from the constitutional principle thus enunciated the wide spread vogue of the cash system is due to its simplicity, finality, and adaptability to the peculiar conditions of government finance.

(1) *As to simplicity,* it could be claimed that the system avoids the elements of uncertainty inherent in asset valuations which is a feature of the accruals system. It does not require the resort to estimates necessary to bring outstanding items to account nor to the precise calculations sometimes required to allocate charges between one period and another.

(2) *As to finality,* it reaches a result immediately following the close of a financial year, thus contrasting with the accrual system under which final figures might be so belated as to destroy much of their value. An early knowledge of the results of a year is a valuable guide to the measures necessary for the next succeeding year. In government, where administrations change from time to time, there is need for a speedy method of determining the state of the finances at the stage where an incoming administration takes over from an outgoing one so that the new government can commence with a full knowledge of its position, in accordance with the standard method of determination.

(3) *As to adaptability,* an outstanding difference between government and private finance is to be observed, in that the declaration of an annual result on lines as exact as possible might be vital to a business concern, affecting as it does the demarcation of the proprietary funds between capital and income, and the payment of dividends, whereas no such considerations enter into government finance. It is a trite statement that the business of government is continuous; the financial year should be regarded as a means of separating one period from another rather than as a separate phase of the State's existence. Indeed the public finances only appear in their proper perspective, no matter what

system of annual accounting is adopted, if viewed over a series of years, because, with the disparities between one year and another smoothed out in the general result, the real trend of affairs can then be seen.

Expenditure Classification. Primarily, expenditures are shown in the Public Accounts under the heading of the fund from which they are incurred. The first form of expenditure classification might then be said to be according to the particular characteristic which determines the allocation of expenditure to one or other of the funds. Thus in a well ordered financial system, expenditure from the Loan Account would reveal those characteristics which make it a proper charge against the proceeds of public borrowings, while the characteristic of expenditure from the Consolidated Revenue is the "revenue" as distinct from "capital" nature of the service upon which it is incurred. Whenever, as is not infrequently the case, considerations other than the intrinsic merits of an expenditure govern its allocation, the fund system no longer provides a classification according to its character. It serves merely to show expenditure according to its source. Again, should the cost of a service be met in any year partly from one fund and partly from another, the system tends to destroy unity in expenditure classification.

In New South Wales the statutory prescription already noted, that expenditures are to be shown in the same form and under the same divisions as used in the Appropriation Act, means that expenditures on current services must appear in the Public Accounts according to organization units, that is, under the headings of the various departments which administer the votes as set down in the Appropriation Act. It is the practice of the State to supplement this presentation with another statement summarizing each year's expenditure according to functional classifications.

The insistence on the constitutional principle that expenditures must be accounted for in the same manner as they are voted, is not in itself an impediment to informative reporting. In fact, the different departments are linked with specific functions of government, so that the arrangement of expenditure, by departments, results somewhat in a functional classification. But this is not uniformly so; and moreover, circumstances bring about an incompleteness and lack of permanency in the prevailing system of departmental classifications. For one thing, because supplies are voted through the several Ministers of the Crown, expenditures are arranged according to the particular departments coming under the control of each Minister. Ministerial groupings

do not follow a fixed or clearly defined plan. On the contrary the allocation of departments to Ministers is guided partly by precedent, and partly by chance and it is subject to Cabinet exigencies. Changes are not infrequent, both in the particular departments delegated to a Minister and in the functions of departments. The alterations in the vote headings which then ensue are reflected in the arrangement of the Public Accounts, so that a particular service might lose its identity and annual comparisons might not readily be apparent. Again, there is a complication where supplies for a number of departments are voted, for administrative convenience, on the estimates of a single department—such, for example, as the cost of printing for the public service which is provided on the estimates of the Government Printer, and stationery and other office requisites which are voted on the estimates of the Government Stores Department. The costs of the various services dealt with in this manner appear in the expenditure of the departments through which they were voted rather than under the departments actually using the services. Lastly, confusion is apt to arise when the expenditure on a particular service is met partly on the departmental estimates and partly by special appropriations. In this event portion of the cost appears under the heading of the department concerned and portion elsewhere under the heading of special appropriations.

It is necessary in dealing finally with the State's system of financial reporting to consider certain types of receipts which are in the nature of a by-product of different expenditure services, and, although dealt with as revenue, could with equal propriety be shown as reductions of expenditures. The term Collection-in-Aid, fittingly describes these receipts. Collections-in-Aid occur when a department, predominantly carrying out an expenditure function, receives amounts in payment of a service which it has rendered or for goods which it has disposed of, the cost of the goods or service being part of the expenditure of the department. Proceeds from industries carried on by inmates of gaols, for example, could be regarded as a reduction in the cost of upkeep of prisons; the disposal of the produce of agricultural farms results in a partial offset to the State's expenditure on agricultural education and research; to a lesser extent interest received on loans and advances made by the Government might be viewed as a Collection-in-Aid in relation to the interest paid on the public debt.

The best method of dealing with receipts of this nature for reporting purposes is controversial. Either of two courses might be followed. The receipts could be taken in as revenue, or they could be shown on the expenditure side of reporting statements

as reductions in cost of the services to which they relate. The merit of the former method is that the volume of revenue receipts is not disturbed and moreover it is the more simple procedure; but against this, expenditures are shown at gross amounts, and the effect is to obscure the cost of a particular service. While the second method results in a departure from the desirable objective of maintaining a true statement of receipts, its supporters claim that it could be an incentive to economy, since services are made to appear at their actual cost, and administrative efficiency might be apparent from the extent to which a service is shown to be self supporting or otherwise. Whether this is so is conjectural. In weighing the merits of a system of Collections-in-Aid it is necessary to remember that although they are an important item in the cost of certain services, in a large number of cases they represent only a minor reduction in departmental costs. Almost all spending departments derive some casual receipts from expenditure services. Carried out in its entirety the principle of Collections-in-Aid would result in numerous diversions of small amounts from the receipts to the payments side of reporting statements, to be shown there as reductions in departmental costs, often without any important significance. The system of bringing amounts to account as Collections-in-Aid was followed for some years by the State but it was not kept up. Present practice is to take the amounts in as revenue.

Chapter V

ACCOUNTING PRACTICE

The Treasury Funds

Fund Accounting System. Government accounting is in its essence a system of accounting by funds. By this is meant that receipts and payments are segregated according to their sources and purposes into a number of separate compartments, each of which denotes a distinct sector of government financial activity. This accountancy matching of particular types of income with particular types of outgo stems primarily from certain basic rules of public finance but it may be expanded to the extent that the financial policy of a government dictates. Thus the separation of revenue receipts and payments from those relating to public loans is an instance of the fund accounting principle in its primary sense; the assignment of specific sections of tax receipts to road funds and the treatment of earnings from a business enterprise through a circulating fund are illustrations of the secondary application of the principle.

It is not to be assumed that each fund is in itself a specific accumulation of moneys to be used only for the particular fund purposes. A government scarcely needs to build up cash balances in excess of the needs of its expenditure programme nor is it economical to do so. Treasury financial management is directed to the maintenance of cash balances at a sufficiency level from day to day and for this purpose the resources of all funds are marshalled, the moneys of the stronger funds being used when need be, to meet expenditure requirements of the weaker ones. Hence the fund accounting system, although a means of separating transactions, is not to be viewed as a means of separating the public moneys.

A pooling of fund resources is brought about in the New South Wales system by the operation of the public banking arrangements. Under the Government's agreement with its bankers a separate record is to be kept by the banks for each fund or account but so long as the aggregate net balance of all funds

remains in credit the bank will permit any one of them to be overdrawn. Fund exigencies often result in overdrafts so that the Public Account is customarily a combination of credit and overdraft balances, yielding, by Treasury management, a marginal sum of cash resources. To avoid an accumulation of cash beyond expenditure requirements the Government, under arrangements sponsored by the Australian Loan Council, may lodge interest bearing deposits at call with the Commonwealth Bank. Confronted on the other hand with the prospect of a shortage it may replenish the Public Account by special short term finance covered by Treasury Bills.

The financial ramifications of government invariably lead to the creation of three broad divisions of the fund accounting system. One of these deals with the day to day revenues and expenditures, another with proceeds of public borrowings and disbursements therefrom, and a third with trust or deposit moneys. Although it will be found that a number of additional accounts or funds exist, their purposes and characteristics are related more or less to one or other of the three main divisions and they are in substance refinements or offshoots of them.

In New South Wales the principal accounts or funds are constituted by particular statutes. While much of the law governing the operation of the Consolidated Revenue Fund is contained in the Audit Act the fund is essentially a creation of the Constitution Act. The loan and trust funds are set up by the Audit Act and funds of public business undertakings by the statutes under which the undertakings operate. As the Treasurer is authorised by the Audit Act to open new accounts, the range of the fund accounting system may be widened in accordance with Treasury discretion and, save as to funds prescribed by a statute, it may be contracted by the same authority. Many accounts or funds set up at one time or another by the Legislature or by the Treasurer have fallen out of the system with changes in the law or in Treasury financial policy.

Fund Divisions. Foremost in point of size and importance in the State's financial system, the revenue funds call first for notice. At the head of these is the so called Consolidated Revenue Fund. The idea of a single medium for the whole body of public revenue to which the word "Consolidated" gives expression is of long standing in public finance. It is implicit in Section 39 of the Constitution Act which states that "All taxes, imposts, rates, and duties, and all territorial, casual, and other revenues of the

Crown (including royalties), from whatever source arising within New South Wales, and over which the Legislature has power of appropriation, shall form one Consolidated Revenue Fund. . ."

The consolidation of all the revenues of the State in a single fund is a constitutional safeguard, primarily intended to aid the Legislature in the exercise of its control over the public purse. It is a means of bringing the complete revenues of the State before Parliament for appropriation in a manner which ensures that no portion of the revenues escapes this control. In a lesser importance the consolidated fund is designed for accounting simplicity because it avoids the complication of sectional revenue funds and it provides a comprehensive medium for budget forecasting and financial reporting.

The constitution of the State is not rigid and this provision for a single fund for all revenue receipts and payments can be varied by the Legislature. Perhaps no direction in the Constitution Act is seemingly so well founded yet varied so often. Sectional revenue funds have been set up at different periods in the history of the State. One of the earliest departures occurred when the activities of closer land settlement were segregated in a Closer Settlement Fund. Again, for a number of years portion of the revenues derived from the disposal of the Crown lands was diverted to a Public Works Fund and applied therefrom in meeting expenditure of a quasi-capital nature. The Public Works Fund was discontinued and replaced by a Special Purposes (Revenue) Fund, which contained a similar provision for the isolation of particular revenues and expenditures. At later stages separate funds were constituted for the railways and other utilities and business enterprises, for the treatment of road finances and for unemployment relief and social service activities, the last two dealing with a phase of government financial policy which proved to be short lived.

With State revenues thus distributed over so many separate funds the present day function of the Consolidated Revenue Fund is far removed from that originally contemplated by the Constitution Act. It is well established State financial policy to segregate business revenues from general revenues, and to conduct the affairs of various sectional government activities through self liquidating funds. Moreover, the principle followed by the State of setting aside proceeds of motor taxes in road funds has a wide vogue in public finance. The Consolidated Revenue Fund as now reduced is in reality a General Revenue Fund and its title in the present day financial organization is somewhat a misnomer.

Funds of public business undertakings, exceeding in their aggregate the volume of Consolidated Revenue receipts and payments, are each a subdivision of the State's revenue fund organisation. Here is to be observed the direct opposite of the traditional general revenue consolidation, for each undertaking has its own fund, the content of which is applied continuously to the undertaking's expenditure commitments. The railways, the road transport services and the port of Sydney authority are the largest amongst the business funds but there are many others. Earlier practice under which the State conducted the finances of its business enterprises through the Consolidated Revenue Fund has given way to the separate fund method; the latter has now prevailed for nearly a quarter of a century and is well established in the financial system. The Government is custodian of the funds and they form part of the Public Account, subject always to requisition by the various controlling authorities for expenditure requirements.

Road funds are another important division. It is not unusual for the road funds to be aided from the proceeds of borrowing, but the funds are in the main revenue collection and disbursement mediums, since their regular source of income is from motor and petrol taxation. So far as the State is concerned, the greater part of the yield from motor taxation goes to the road funds, in keeping with the theory that such taxes are designed for the construction and maintenance of public highways. The practice, characteristic of highway finance, of assigning particular portions of tax revenues to special expenditure funds, away from the general revenue pool, has its critics as well as its supporters. In the case of the road funds, however, it is a development of the modern transport age, the need for public highways having given a particular importance to financial measures necessary for their construction and upkeep.

For the segregation of capital transactions the State uses a General Loan Account. Just as the Consolidated Revenue Fund was designed to incorporate all the revenue operations of the Government so also the purpose of the General Loan Account is to provide a single accounting medium for all transactions financed by borrowing. This is a simple proceeding which evolved from earlier practice whereby a separate account was opened for loans raised under each Parliamentary loan raising authority. It enables the proceeds of borrowings to be mobilized for expenditure purposes and permits of presentation of accounts of loan receipts and disbursements in one fund accounting statement. The General Loan Account moreover is a central agency for the receipt and respending of cash returned to the State from the

sale or disposal of assets purchased originally from borrowed funds.

Contrasting with the revenue funds and the General Loan Account, into which are taken receipts available expressly for the public services, the third of the three main fund divisions is concerned with money that comes into the custody but not necessarily the ownership of the State. The Audit Act of 1902 envisaged the classification of these receipts under two headings, one to be known as the Trust Account and the other the Special Deposits Account. The first deals with funds of which the Government is obliged by statute to accept custody while the second consists of funds set aside for special expenditure purposes. There is an accounting affinity between all the deposits and for bookkeeping convenience they are grouped in a single bank account known as Special Deposits. A detailed record of receipts and payments relating to each deposit is kept in the Treasury.

Long established practice makes the pool of Trust or Special Deposit funds available for the general purposes of government. Their use as financing mediums within the Public Account is implicit in the Government's arrangement with its bankers already noted[17] and it is sanctioned by the Audit Act which declares Special Deposit funds to be public moneys. Moreover, the principle is given judicial recognition. In an action whereby New South Wales, (on the grounds that the public account contained trust moneys in which the State had not the beneficial property), contested the right of the Commonwealth under the Financial Agreements Enforcement Act, 1932, to require the State's bankers to pay the balance of the account to the Commonwealth, it was held by the High Court that moneys in the Special Deposits Account were not trust funds in the sense claimed by the State. Their Honours agreed that "the Crown in administering justice and otherwise in performing its sovereign function received money from its subjects, not as trustees of these specific moneys, but in the exercise of its power of government. The subject was entitled to repayment of an equivalent amount of money, and he relied upon the whole credit of the State as his security".[18]

The Special Deposit Account is unique in the fund accounting system in that all the balances making up the account are in the very nature of things credit balances. Unlike the Consolidated Revenue Fund and the General Loan Account payments do not require the sanction of a Parliamentary vote but may be made in

[17] Page 52.

[18] Extract from the Australian Law Journal (Vol. 6 No. 1) 15th May, 1932.

accordance with the authority appropriate to each deposit. No payment, however, can be made from a Special Deposits Account unless it is for the purpose underlying the account.

Another assortment of accounts in some respects similar to Special Deposits is to be observed within a grouping designated Special Accounts. These consist of funds which have come into the trusteeship of various officers of the Supreme Court, namely the Master in Equity, Master in Lunacy, Pronothonotary, Registrar of Probate, and also the Public Trustee. A particular characteristic is that the funds cannot be operated upon by the Treasury but only by the respective officers by whom they are controlled.

The Special Accounts are constituted in some cases by statute, in others by Rules of the Supreme Court governing the jurisdictions to which they relate. None of the accounts is referred to in the Audit Act and, they could be described as an appendage of the Treasury financial system rather than an integral part of it. They form part of the Public Account, the balances being brought into the Treasury books from day to day in accordance with advices furnished by the bank. From the viewpoint of the Treasury the essential result of their amalgamation with the government account proper, is that they strengthen the cash position at the bank, and thus rank with other accounts and funds in providing finance for the general purposes of government.

Revenue and Expenditure Accounting

Treasury and Departmental Control. Some of the State public departments are predominantly revenue collecting agencies and some are spending organizations. Others again are engaged to an important degree in both activities. Whatever might be the relative extent of collections and expenditures, the moneys of each are never mixed; a department must account separately for its collections and it cannot use them to finance expenditures.

The accounting organization of the State is divided, therefore, into two sections, one of which deals with receipts and the other with payments. At the head of each stands the Treasury. All collections by accounting officers flow there, to be incorporated in one or other of the government funds; and it is from the Treasury that departments and other spending agencies derive their expenditure resources.

The function of the Treasury, as the financial authority, makes it necessary for that department to be also the accounting centre. This does not mean that the central record be set up in detail; rather the scope and extent of the Treasury accounts

should be such that they keep the administration informed of all important aspects of the finances, routine accounting procedures being left to the various government collecting and spending agencies.

As already stated a State Treasury organisation of such a character has evolved in recent years.[19] The earlier concept of accounting responsibility is to be seen in the extent to which the Treasury entered into the detail collection and disbursement of public funds. Any statutory direction that a particular impost or charge had to be paid to the Colonial Treasurer was taken literally to mean that it had to be paid direct to the Treasury. Routine accounts were kept for the payments, and disbursements against departmental appropriations were recorded in detail. The accounts of land debtors and other forms of Crown dues were maintained in the Treasury while the practice was to submit departmental expenditure vouchers to a special Treasury examination before they were paid. Later years have witnessed the relinquishing of the more minute forms of accounting and the development of the idea of a central bureau, exercising its power of supervision and control by intensive budgetary investigation and oversight of departmental revenue and expenditure processes. Nowadays the tendency is to restrict Treasury account keeping to a record showing the receipts, payments and balances of the various funds and to the compilation of budgetary data.

From the Treasury the accounting system fans out to the departments through their head offices and branches. Much of the public revenue is collected by departments, and apart from debt charges, the major portion of service expenditures passes through the same agencies. In almost every centre there is an officer associated with the local court, best known as a Clerk of Petty Sessions, who attends to the collection of a variety of public fees and charges. The officer acting in this capacity may be attached to the Justice Department or to the Department of Lands but, as a rule, he looks after the revenue interests of both departments as well as those of the Mines Department. In some of the major land administration centres, receipts from the rental and sale of public lands are collected through a district office of the Department of Lands. Forestry royalties are gathered in by district and sub-district Forest Officers who also attend to local disbursements on afforestation and timber preservation services. Also throughout the country there will be found offices of the large spending departments, such as the Department of Public Works and the Water Conservation and Irrigation Commission, as well as

---

19 Chapter II.

agricultural farms and colleges, educational institutions, prisons and various other departmental branch receiving and spending organisations.

It has already been observed of State public departments that they are merely organisation units grouped around the responsible Ministers of the Crown and strictly speaking that they are not recognised in the law governing State financial practice. For the purpose of regulation and control, however, the Audit Act refers to "accounting officers". This term as defined in the Audit Act does not indicate a figure head set up by virtue of rank or association with the financial side of a department to discharge its responsibilities in matters of finance. An accounting officer is declared to be any person who by any law, regulation or appointment is charged with the duty of collecting or receiving, or who actually collects or receives, or who is charged with the duty of disbursing or who actually disburses public moneys. A clerk fresh from school becomes an accounting officer if he collects a fee across the counter of a suburban court house, in the same manner as a Commissioner of Taxation or a person appointed to control a large public undertaking. As will be apparent the wide meaning given to the term "accounting officer" is designed to bring all and sundry within its scope. Every accounting officer is subject to the provisions of the Audit Act and also to regulations drawn up by the Treasurer under the authority of that Act. Accounting officers are to perform such duties, keep such books and render such accounts as are prescribed or as the Treasurer directs. In this manner, departments, through their accounting officers, are in effect given a personality and the State-wide financial organisation of the Government is brought legally within Treasury control.

Accounting for Revenue. The Treasurer is empowered by the Audit Act to negotiate with any bank or banks for the conduct of the Government's banking business. Pursuant to this authority, arrangements for the keeping of the Public Account, the opening and closing of bank accounts and the receipt, custody, payment and transmission of public moneys have been laid down by agreement between the Treasurer and the Government's bankers. Only in one instance are the details of the public banking arrangements subject to statutory fixation, and that is where the regular submission of banking information is prescribed by the Audit Act as part of its directions for the continuous audit of the Government accounts. The Act provides that a statement setting out the deposits and withdrawals of each fund is to be forwarded to the Treasury daily. A copy of every such statement is also to be forwarded to the Auditor General.

With the exception of a few large revenue-receiving departments which pay their collections direct to the Government's bankers, public receipts are remitted by the collecting departments, at fixed intervals, to the Treasury. An accounting officer collecting or receiving public revenue in Sydney, or in an adjoining area, is obliged by law to pay the money to the Treasury weekly. If he is located elsewhere in the State, he must make the payment at the end of each month. Pending this remittance, he accumulates his collections in a local bank account opened by the Treasury for the purpose and known as a Public Revenue Account or a Collections Account. Such an account can be used only to receive the collections of the particular officer on whose behalf the account has been opened and it cannot be operated upon by him except for the purchase of a bank draft in favour of the Colonial Treasurer for the weekly or monthly remittance. A safeguard is thus introduced into the accounts of a collecting officer as, once having made a deposit at the bank, the money is no longer at his disposition except for remittance to the Treasury.

In a number of instances branches remit their collections to the Treasury through their head offices. This is done where accounting convenience is best served as, for instance, when sundry debtor accounts to which the collections are to be credited, are kept at the head offices. In essentials, the procedure to which accounting officers are subject in relation to head office remittances is the same as laid down for remittances to the Treasury. The moneys are incorporated in the head office cash receiving system and accounted for in due course to the Treasury.

There are many Public Revenue Accounts and Collection Accounts throughout the State. They do not form part of the Government's Public Account, even though they may be opened in the bank at which the latter account is kept. Moneys lying in the accounts are, therefore, excluded from the recognised cash balance of the Treasurer and from any interest allowance. For that reason, where collections throughout the country are regularly of large amounts the practice is adopted of remitting them more frequently. This method is applied to receipts from the Crown lands, which have to be remitted at weekly instead of monthly intervals.

With each weekly or monthly remittance an accounting officer forwards a voucher upon which is set down the fund and the detailed sub-headings of receipts to which the remittance is to be credited. The collections are deposited by the Treasury to the appropriate fund bank accounts and entries are made in the Treasury books crediting the amounts to their nominal headings. Those departments which deposit receipts direct at the bank for

credit of the Treasury likewise forward vouchers showing details of the deposits for incorporation in the Treasury books. Collections thus having reached the Treasury or having been lodged direct to the public account they are legally implanted in the public receipts. If they are revenues payable to the Consolidated Revenue Fund or moneys belonging to the General Loan Account they cannot, except where found to have been received by mistake or under other circumstances grounding a refund, be withdrawn therefrom other than by authority of a vote by Parliament.

Accounting officers, by virtue of their office, frequently come into possession of moneys which are not payable to any of the Treasury accounts or funds, but are received on behalf of members of the public for disbursement to them. Since receipts of this character cannot be dealt with through the normal revenue-collection and remitting machinery, they are deposited to a special bank account, whence they are paid to the persons to whom they belong. A Public Moneys Account, as this account is known, will be found in most collecting offices. Unlike a Public Revenue Account, a Public Moneys Account can be operated upon without restriction, both as to deposits and withdrawals, by the accounting officer who controls its operations. The collections which come within the scope of a Public Moneys Account cover a wide range of receipts of a trust nature and, for convenience sake, the account is frequently used as a medium for the temporary custody of moneys collected on behalf of another government department, for the lodgment of short-term security deposits or for other suspense purposes.

Unless warranted by special circumstances, undisbursed amounts are not held in Public Moneys Account for more than three months. At the end of that period, they are remitted to the Treasury, where they are credited to Special Deposits Account under the heading of Unclaimed Moneys. After a further two years, they are transferred to the Consolidated Revenue Fund, but a person who is able afterwards to substantiate a claim may obtain a refund.

Accounting for Expenditure. The Treasury and departments share the expenditure organisation. Only the Treasury can operate on the Public Account, and departments, for their part, are dependent upon Treasury advances or upon overdraft facilities. Under either method funds to cover the disbursements are found by the Treasury from the Public Account, but in the one case this is done before the department makes a payment and in the other case it is done afterwards by way of a recoupment of the departmental overdraft.

The standard medium for departmental payments is known as a Drawing Account. Usually a department is allowed to draw upon this account by way of overdraft up to a prescribed amount, either for the purpose of meeting payments or for setting up sub-advances. Although overdraft balances of Drawing Accounts are not reflected in the Public Account they are treated for interest purposes by the Government's bankers as a set off against the cash balance of that account. The normal practice is for departments to request the Treasury to lodge the amount required for disbursements to its Drawing Account at the stage when funds are needed.

Treasury lodgments to departmental drawing accounts are made in the form of advances to be accounted for. With each application for an advance a department submits abstracts to the Treasury setting out the different funds to which the expenditures are to be charged. The amounts shown by abstracts are brought to account in the Treasury books against these funds, and after lodgment of the moneys to the departmental Drawing Account the Treasury transmits the abstracts to the Auditor-General. They constitute a clearance to the Treasurer for moneys withdrawn from the Public Account, but in the eyes of the Auditor-General the clearance is not final because vouchers showing in detail the nature of the disbursements for which the funds were withdrawn have still to be furnished. This is the department's responsibility. A department, upon obtaining an advance from the Treasury, is obliged to submit vouchers to the Auditor-General within a stipulated period in adjustment of the advance. When, in due course, the vouchers are submitted they are examined in detail in the Audit office and checked with the books of the department concerned.

Branch office expenditures by departments are met from sub-advances set up by the head office drawing upon its overdraft allowance within the departmental Drawing Account. Sub-advances are operated on the imprest system. A branch office makes its disubursements from the sub-advance, and it forwards vouchers for the disbursements to the head office. The funds necessary to recoup the sub-advance are requisitioned from the Treasury by head office and are lodged by the Treasury to the departmental Drawing Account as an advance to be accounted for. The head office, in turn, lodges the moneys to the credit of the branch sub-advance. This account is thus restored to the amount of the imprest, the expenditure is incorporated in the books of the Treasury and the department, and the accounting cycle is then complete. In due course, vouchers for the expenditure reach the Auditor-General.

Between a department and its branch office there is a continuous check of sub-advance operations. Copies of disbursement cash books, together with bank statements, are forwarded by the branch at regular intervals to the head office which checks the transactions with its branch control records. The branch is also obliged to submit a complete statement of its imprest at frequent intervals, that is to say, it must account for the full amount of the sub-advance in the form of cash at the bank and paid vouchers either on hand for despatch to head office or at head office awaiting recoupment to the sub-advance. When audit officers carry out a local examination of branch accounts the sub-advance has to be accounted for to them in the same way.

A safeguard laid down by the Treasury in its arrangements with a bank for the operation both of departmental Drawing Accounts and branch sub-advance accounts is to be noted in that only the Treasury can lodge an amount to a Drawing Account and only the head office of a department can make a lodgment to a sub-advance account. Accounting officers controlling these accounts are thereby debarred from operating on them except by way of disbursements, and having withdrawn an amount they cannot make a re-deposit which might have the effect of cancelling the withdrawal. On the contrary they must have recourse to the proper lodgment authority. It is this requisite which ensures that once an amount is withdrawn from a Drawing Account or a sub-advance account a voucher for the disbursement must at some stage emerge to be brought to account as an item of fund expenditure at the Treasury and thus automatically to come under the scrutiny of the Audit Office.

Chapter VI

STATE TAXES, FEES AND CHARGES

Stamp and Death Duties

Types of Stamp and Death Duty Taxation. Apart from personal and corporate income taxes, stamp and death duties together have for long afforded New South Wales its most fruitful source of taxation revenue. The law governing the two forms of duty is contained in the State's Stamp Duties Act.

The imposts possess these features in common that they are a tax on transactions which have a legal background, their payment is indicated by stamps impressed on or affixed to legal instruments and responsibility for administration and collection is centred in the one authority, known as the Commissioner of Stamp Duties. It is not unusual to refer to them in combination, although each is a separate item in the public receipts. Their fiscal value, as well as comparative ease of collection, accounts for the prominence of the duties in the taxation system and they are widely supported on social and ethical grounds. Thus, stamp duties are held to be a payment to the State in consideration of the protection afforded by law to the instruments from which they arise. The privilege vouchsafed to the individual to perpetuate the line of property ownership by transmission at death provides the moral background to the imposition of death duties. It is generally considered that the State is entitled to take toll of property which it has safeguarded during the lifetime of a decedent. Moreover, death duties are especially favoured by those who view taxation as a means of correcting social inequalities, because of the counter effect of the duties on the tendency for wealth to concentrate in the hands of a few.

A section in the Stamp Duties Act sets out the legal basis upon which stamp duties are founded: "No instrument executed in New South Wales or relating (wheresoever executed) to any property situate or to any matter or thing done or to be done in New South Wales shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful or available in law or equity for any purpose whatsoever unless it

is duly stamped in accordance with the law in force at the time when it was first executed." The Act imposes duty at fixed or ad valorem rates upon a variety of instruments, ranging from receipts and cheques, dutiable at two pence for each instrument, to property conveyances, deeds, etc., which attract ad valorem duty at the higher extremes of the scale. On some instruments (such for example as agreements, bills of lading, charter parties, contract notes, foreign bills, insurance policies and receipts), the Act permits the use of an adhesive stamp; in other cases, payment of duty is to be indicated by stamps impressed by means of a die in the office of the Commissioner of Stamp Duties. According to financial classifications, duty from deeds, sales of adhesive stamps and cheque stampings are the principal items of stamp duty revenue in New South Wales. With the range of rates of duties well established there is, except for relatively minor revisions, little scope for regulation of their yield. The fiscal value of stamp duties is governed mainly by fluctuations in business conditions from year to year.

The term "death duties" is a compendious one indicating several variously described forms of taxation, all of which are alike, however, in that they are levied on the estate of a deceased person or on a person to whom benefits accrue by the death of another. There are two distinctly characteristic sections of death duty—one known as estate duty and the other as inheritance taxes. An estate duty is levied on the whole estate left by a decedent and is legally payable from the estate. An inheritance tax is one which bears upon the proportionate share of each beneficiary in the property which passes at death. Because an inheritance tax is a specific charge on the property to which a person succeeds, and is legally payable, therefore, by a beneficiary instead of from the deceased estate, and because the rate of the tax usually varies according to the degree of beneficiaries' kinship with the deceased, the essential difference between an estate duty and an inheritance tax is in their incidence. The particular system adopted by a Government may follow the lines of a true estate duty or a true inheritance tax, or it may embody some of the features of each type of impost.

The relationship discrimination in an inheritance tax invariably takes the form of a lowered rate in favour of that class of beneficiary, such as the widow or direct lineal issue of the deceased, upon whom property most often descends. For that reason the system of inheritance taxes is least favoured from the

fiscal viewpoint. Moreover, an estate duty is easier to administer and collect and, altogether, it is held to be the more simple form of impost. The collecting authority has to look only to the personal representative of the deceased for payment and in all matters incidental to the determination of the amount to be paid. The whole duty is payable in one sum as at the date of death, and the assessment is free from those complications which often mark an inheritance tax, such as arise, for example, when a succession to property is postponed in favour of a life interest and duty has to be calculated by actuarial formula based on the life expectation of the person enjoying this interest.

The generic term "death duty" is legally used in New South Wales. Basically the imposts follow the form of an estate duty, although the total payment is arrived at on discriminatory lines according to the extent of property passing to those in close kinship with the deceased, as against property passing to those further removed and strangers in blood. Certain charitable bequests are also favoured, while the estate of decedent domiciled within New South Wales carries a less rate of duty than that of one domiciled elsewhere. In the oldest sense that death duties are understood, the expression "probate duties" is commonly applied to the New South Wales system. This term, in reality a survival of the one used in earlier statutes, lingers in State financial reports. It derives from the association of the duties with the grant of administration in an estate. Thus, the Stamp Duties Act lays down various procedures which are precedent to the grant and are designed to ensure that the Commissioner of Stamp Duties is furnished with a statement, in form prescribed, setting out the assets and liabilities of a deceased. Again, the Act provides that payment of duty is to be denoted by a stamp impressed by the Commissioner on the probate and letters or other instrument of administration. It is to be remembered, however, that the act of probate is purely a legal one, which, although it attracts payment of fees, is not, strictly speaking, in itself dutiable.

Scope of State Death Duties. Liability or otherwise to duty is governed by two main factors—the domicile of the deceased and the locality of the property. When a person dies domiciled in New South Wales his estate for duty purposes is to be deemed to consist of all property in the State and personal property out of the State; when a person dies domiciled outside New South Wales, only those assets situate in the State are dutiable. But duty on property outside the State may be abated when the property is situate in any of the British dominions. If satisfied that duty has been paid on any such property according to the law

of the country where the property is situate, the Commissioner of Stamp Duties may reduce the duty by the amount so paid or the duty which would be payable on it in New South Wales, whichever is the lower. Payments under the system of death duty imposed by the Commonwealth are excluded from this allowance.

Death duty is assessed on the final balance of an estate, that is to say, the sum of the dutiable assets after allowing for all debts owing by the deceased. The duty is payable by the administrator, and becomes a charge on so much of the dutiable estate as is situate in New South Wales. The duty is assessed as at the death of the deceased. It becomes due on assessment, but if not assessed within six months from the death, or twelve months where administration is first granted outside New South Wales, the duty is deemed upon assessment to have been due and payable at the expiration of this period of six or twelve months. Thereafter, it is subject to interest at the rate of eight per cent. per annum for the period in which it remains unpaid.

The State adopts a progressive scale of duty commencing at a rate of three per cent. on an estate of £1,000 and mounting by steep gradation to a rate of thirty-two per cent. where the estate is over £100,000. If the net value of an estate exceeds any turning point in the rate by only a small sum, a slight scaling down of duty is allowed so that the estate will not be left with an amount which after payment of duty is less than would be the case if it had not included this marginal sum. No duty is payable in an estate which when aggregated with the value of all the foreign assets of a deceased does not exceed £1,000 net value, or on the portion of the widow, widower, or children under twenty-one years of age in an estate which when similarly aggregated exceeds £1,000 but does not exceed £2,500. If an estate when aggregated with foreign assets is greater than £2,500 but less than £7,500, a proportionate reduction in scale rates, varying from one-half to one-tenth according to the ascending value of the amount which passes to the same class of beneficiaries, is allowed on that part of the estate which so passes.

These concessions in the case of small estates are altogether distinct from the general plan of discrimination adopted throughout the death duty schedules. One schedule sets out the duty payable on the estate of a person who dies domiciled out of New South Wales. Here rates are not graduated on a kinship basis, but so much of the net estate as passes, either outright or by way of beneficial interest, to a public hospital, for the relief of poverty or the promotion of education within the State is subject to duty at a lower scale. Duty on a higher scale is paid on all other property. The duty on an estate where the deceased died domiciled

in New South Wales is dealt with under another schedule. Except where the net estate exceeds £100,000 in value, rates are less than in the case of foreign domicile and relationship discrimination is introduced into the scale, firstly, as to that part of an estate where property or the beneficial interest therein passes to the widow or lineal issue of the deceased and, secondly, and to a lesser extent, where beneficiaries are the widower, lineal ancestor, brother or sister or issue of a brother or sister of the deceased. A specially lowered rate of duty on certain charitable or educational bequests is also allowed. It is a recognised estate duty principle, and one followed in New South Wales, that the estate of a decedent domiciled within the jurisdiction is to bear duty calculated upon the aggregate value of dutiable property, local and foreign, while the rate of duty upon the estate of a person who at the time of death was domiciled elsewhere is to be based only on the value of property within the jurisdiction. Hence the rates applicable to local domicile are often enhanced by the inclusion of personal property situate outside New South Wales, while no such enhancement occurs in the case of foreign domicile. The relatively heavier rates in the death duty schedule for the latter type of estates, contrasted with those appertaining to local domicile are, therefore, largely compensatory.

Gift and Succession Duties. Apart from the trend to higher rates and steeper gradation, much of the development in New South Wales death duty legislation since first introduced in 1865 has been towards closing avenues for evasion, particularly in relation to settlements, gifts and other legal devices entered into during the lifetime of a deceased for the purpose of removing property from reach of the duties. The notional estate of a deceased for death duty purposes includes property which passed from him under settlement or other disposition whereby an interest was retained by the deceased for his life; property disposed of by a will or by a settlement containing a trust in the property to take effect after death; and property which a deceased has, without consideration, caused to be vested in himself and some other person jointly so that a beneficial interest therein passes to some other person on the death of the deceased. Any property comprised in a gift made by a deceased within three years before his death is dutiable, including money paid on property transferred within this period in pursuance of a covenant or agreement made at any time without full consideration in money or money's worth. The fact that the subject matter of the gift may or may not be in existence at the death does not remove it from duty. The property in the gift is dutiable according to its value at the date of the gift, but the Commissioner of Stamp Duties may, at his

discretion, reduce this value by the amount by which it might have depreciated in the hands of the donor during the intervening period. Any such gift made to a public hospital, for the relief of poverty or the promotion of education in the State, is excluded however, from death duty.

The Act further provides that duty shall be imposed upon property comprised in a gift made at any time unless bona fide possession and enjoyment of the property has been assumed by the donee three years or more before the death of the donor and thenceforward retained to the entire exclusion of the donor. In this case, the transaction is regarded as wholly in the nature of a testamentary bequest and there is no limitation as to time. So also, a revocable gift, accompanied by delivery during the donor's last illness and made in contemplation of death upon condition that it shall belong to the donee only in case the donor should die (*donatio mortis causa*), is subject to duty.

The law in connection with dutiable property comprised in gifts made by the deceased is that duty is payable in the first instance by the personal representative, but it is chargeable by him to the donee unless contrary provision is made by the deceased. Complementary, however, to the inclusion amongst the assets of a deceased estate of property transferred by way of gifts *inter vivos,* the Stamp Duties Act adopts the principle of taxing the gifts at the time they are made, that is, during the lifetime of the donor. Duty payable on gifts as such is set down in a separate schedule, and the taxation machinery is provided in the general stamp duty section of the Act. Until 1952, the rates had been much lower than those provided in the normal death duty schedules but by legislation of that year they were brought into line with rates payable on property passing at death to the widow or lineal issue of a locally domiciled person. The rate on a particular gift is obtained by aggregating all such gifts made during the preceding three years and where any transfer of property is effected partly for consideration in money or money's worth and partly by way of gift the former portion is dutiable at the rate applicable to property conveyances while the gift portion bears duty at the rate prescribed in the gift duty schedule. An outright gift or settlement of property is free from death duty provided it is made more than three years prior to death but should a donor retain a beneficial interest, the death duty exemption applies only if the retained interest is given up more than three years before the death. In calculating death duty, double payment is avoided by allowance of a rebate equal to gift duty already paid.

Succession duties, introduced into the law in 1939, were removed after only a short period of operation, but were restored again in 1952 with modifications designed to give relief in the case of quick successions and in certain circumstances to free estates of small value from payment of this form of duty. Irrespective of the amount of the property no succession duty is payable upon the cesser of a limited interest should this occur within five years of the death of the person who created the interest. An allowance of 50 per cent. of the duty is made where death occurs after five years and within six years; this allowance is reduced by 10 per cent. for every subsequent year until eleven years, after which the full rate is to be paid. Where the total value of an estate does not exceed £7,500, no succession duty is payable at any time on so much as passes to the widow, widower, children or grandchildren of the person who created the limited interest.

For succession duty exemptions or concessions to apply, it is necessary in all cases that the Commissioner of Stamp Duties be satisfied that the property passing under the succession had been included in the estate of the original decedent and that death duty had been paid on it.

Other State Taxes and Charges

Personal and Corporate Income Taxes. Apart from customs and excise which are the exclusive domain of the Federal Government, the field of taxation in Australia may be shared, constitutionally at least, by the Commonweath and the States. Up to the time of federation, taxation revenue in New South Wales was derived from customs and excise, stamp and death duties, and land and income taxes. Of these, stamp and death duties are the most important now surviving, while imposts on racing and motor traffic (the latter assigned to road funds) have since been added to the tax structure.

A tax on income, first imposed in 1895, yielded only a relatively small annual sum in the then few remaining years of the pre-federation era. With the loss of the customs and excise power, however, income tax offered the State its most expansive taxation field and although new sources of tax revenue were introduced not many years passed after federation before income tax had become the mainstay of the taxation system.

The original income tax was based on very broad and simple lines and, judged by the more searching nature of later legislation, much income now brought within the reach of the tax authority must have escaped assessment. Apart from its fiscal purpose, the

originators of the income tax saw in it a means of adjusting the social anomaly of the customs duty, which pressed upon all classes in the community, rich and poor alike. The tax, therefore, sought out the more affluent citizens and, by reason of a relatively high exemption, a large number were excluded from its scope. A common rate was adopted, however, for all income ranges. Subsequent development of the tax was marked by several variations in its incidence and rating, but it was not until 1928 that the State adopted the more complicated structure, including the gradation principle, characteristic of modern tax practice.

After it had been in existence for twenty years, the annual yield from State income tax exceeded twenty per cent. of the general revenues, contrasted with only five per cent. in the first full year of operation. Growth of the tax had been steady until the period of financial depression which preceded the second world war. It then developed a spectacular rate of increase so that in a few years from 1929 the annual collection more than doubled. The exigencies of depression finance were responsible for the introduction of a supplementary tax for unemployment relief, one feature of which was a provision for deductions at the source from incomes of salary and wage earners, the deductions being indicated by stamps affixed to pay rolls. The Unemployment Relief Tax was replaced after a few years by a Wages and Special Income Tax, and at a later stage a further change was devised whereby the supplementary imposts came to be known as an Unemployment Relief and Social Services Tax. Here again, the change was shortlived, for in two years the principle of supplementary taxation was abandoned and there emerged a new Act consolidating the several taxes in a single structure.

This was the position reached at the close of the second year of World War II, at which stage income tax accounted for more than fifty per cent. of the general revenues. In the financial emergency created by the war, New South Wales together with the remaining States came into conflict with the Commonwealth in the income tax field. The States were prohibited by force of the superior Federal power from imposing a tax on incomes and in place of the revenue from this source they became unwilling participants in a system of re-imbursement grants introduced by the Commonwealth. A more detailed discussion of developments subsequent to the introduction of Uniform Income Taxation belongs to the chapter devoted to the Federal Grants system.[20]

Land Tax. Like the income tax, a land tax was first instituted by New South Wales in 1895. With the passing, eleven

[20] Chapter VIII.

years later, of a Local Government Act whereby a system of shire government was established throughout rural areas, the newly-created local authorities were required to levy a general rate on the unimproved value of lands within their boundaries. The State thereupon relinquished the land tax over the areas so affected, leaving only freehold areas in unincorporated districts within the Western Division subject to the tax. From then onward receipts have amounted to only a few thousand pounds each year.

Racing Taxation and Lotteries. Horse and greyhound racing attracts State taxation in devious ways. Bookmakers are required to pay a license fee varying from £5 to £70 per annum according to the locality of the license and the grade of racecourse enclosure in which the bookmaker desires to operate. In addition he pays one pound per cent. on betting turnover and one penny or one half-penny on each wager. The lastnamed is a stamp tax administered by the Commissioner of Stamp Duties and paid when the bookmaker purchases the betting tickets, which are already stamped and numbered. Racing Clubs and Associations are obliged to account to the Treasury for a prescribed portion of their receipts from fees charged for bookmaking rights, while a special tax of fifteen per cent. of gross racing income is levied on clubs conducting greyhound races in the Sydney metropolitan area.

In addition to bookmakers' taxation the State also benefits from a totalizator tax. Twelve and one-half per cent. of the total wagered through the totalizator remains in the pool, and of the amount so held a proportion varying from nine-twenty-fifths in country centres to three-fifths in the metropolitan area is paid to the Treasury. The remaining proportion is shared by totalizator and racecourse managing authorities. Unclaimed dividends and fractional amounts omitted from dividend calculations also go to the State.

Racecourse admissions, together with other forms of amusement patronage, offered for some years up to the middle stages of World War II a worthwhile source of entertainments taxation. The field was shared with the Commonwealth, which provided the machinery for collecting both State and Federal entertainments taxes and handed over to the State its portion. When the Commonwealth, in 1942, introduced measures already referred to for a single income tax, it also brought entertainments within a uniform tax scheme. The State thereupon relinquished the tax, the loss of revenue being made good by a Federal grant equal to the proceeds in the last year in which the tax had operated. As in the case of incomes the State entertainments taxation remained suspended after the war as part of the post-war Federal grants arrangement.

Prizes won in lotteries offer a ready means of taxation but it has never been State policy to tax them. Actually, New South Wales conducts its own lotteries, and since they return a profit of several million pounds each year this very old device of turning the speculative instincts of the people to the good of the public revenues is of no small value to the State budget. Gross proceeds of lotteries conducted by the State are credited in the first instance to a Treasury trust account. An amount sufficient to meet prizes is retained in the trust account and the balance is transferred to Consolidated Revenue Fund. Lottery Office administrative costs and expenses of conducting ballots are met by annual appropriations from that fund.

Licenses, Fees and Charges. Licenses, as so termed, are linked with a number of regulatory functions carried on by the State. Here the Government is actuated by two considerations. Primarily, it is concerned in safeguarding the public welfare in relation to the actions of individuals in matters affecting the general community, for example, the liquor trade, the conduct of theatres and public halls, the storage of explosives and inflammable liquids and the private ownership of firearms. Secondarily, it is interested in the scope for special taxation. The right of the individual to carry on a trade or profession or to pursue any line of action in which the State is interested in this regulatory or taxation sense is signified by the issue of an appropriate license for which the holder pays a yearly fee. Although some expenditure is incurred in administering the several laws through which the State exercises its controlling authority and the fees could be regarded in part as a reimbursement for these expenditures, in essence receipts from this source are in the nature of taxes. They are grouped under the heading of taxation in the Public Accounts. License fees are to be distinguished from that other body of fees collected by the State and known as Fees for Services Rendered.

Most important of the various types of licenses, both in point of the public welfare involved and in their revenue content, are those issued for the sale of fermented and spirituous liquors. Taxation of the liquor trade was one of the earliest forms of taxation adopted by the State. It is distinct from excise levied exclusively by the Commonwealth on the manufacture of liquor. There are good grounds in support of the imposition of liquor license fees as a means of State revenue and also in a general way. For one thing, the social consequences of liquor consumption fall heavily upon the State in their calls upon police activity, hospitalisation and poor relief. Again, because the State has by legislation set a limit to the number of liquor licenses, the holder

enjoys a lucrative monopoly which calls for a substantial contribution in consideration of the monopoly privilege. Finally, liquor as a luxury commodity invites special taxation to an exceptional degree.

The fee for a new publican's license is fixed by the licensing court which grants the license. It is not, however, to exceed £500. The license may be renewed for each ensuing period from July to June, and with every renewal the holder pays an amount equal to five per cent. of the gross value of all liquor purchased by him during the preceding year ended 31st December. Additional fees are payable upon transfer of a license, for the right to conduct a liquor booth or stand and for various other purposes ancillary to the main license. For a new spirit merchant's license, the fee may be twenty or thirty pounds, and for renewals two per cent. of gross purchases; for a packet license, twenty pounds and two per cent., and for an Australian wine license such sum up to fifty pounds as may be fixed by the court, with two per cent. for renewals. Clubs registered under the Liquor Act pay a fee for registration, varying according to membership, and thereafter an annual amount equal to two per cent. of purchases, while restaurant proprietors holding a permit to supply light wine and malted liquor with meals pay an initial fee of thirty pounds and for renewals two per cent. of the gross value of yearly purchases. Brewers are required to pay an annual fee of fifty pounds if the brewery premises are located within the metropolitan licensing district, and twenty-five pounds if the premises are located elsewhere in the State.

Apart from the liquor trade, which accounts for more than ninety per cent. of the total, in no one instance do receipts from license fees reach a substantial amount. In addition to those already referred to, the system of government license extends to auctioneers, stock and station agents and real estate agents, sellers of tobacco, cigars and cigarettes, shopkeepers trading on Sundays, hawkers, wool, hide and skin dealers, collectors and business agents.

Excluding receipts from the public domain and those dissimilar and irregular items known as "windfalls", the remaining body of State general revenue consists, in the main, of a varied assortment of fees and charges. These make up a distinct general revenue classification, described as Receipts for Services Rendered and, since they arise mainly from the carrying on of essential government functions, they are not so much revenue proper as reductions of various governmental costs.

If regard be had to the large volume of receipts derived by the Government from public utilities and business undertakings, fees and charges must appear by far the largest single item of

State revenue. The treatment of public business income through self-liquidating funds takes all but a relatively small residue of fees and charges from the general revenue category. There are, however, a few major exceptions to the self-liquidating fund practice. Navigation, harbour services and bulk wheat handling afford instances of near business enterprise the transactions of which form part of the general revenue system. Pilotage, harbour and light rates, and harbour and tonnage rates at outports are credited to Consolidated Revenue, as are grain elevator fees and revenue from State operated tourist activities. In each of these cases, the benefit to the general revenue is countered by capital debt charges and maintenance costs, all of which are included in Consolidated Revenue Fund expenditures.

It is a characteristic of most forms of receipts for services rendered that the charge for a particular service is not necessarily related to its cost. Various considerations more or less influence the fees schedule. The value of outports, for example, is measured by the contribution made by them to trade and commerce as well as by their direct yield in fees and charges. Receipts for maintenance of patients in mental hospitals are merely incidental to the State's obligation to care for the insane and do not nearly meet costs of mental hospitals. Nor do students' fees reimburse the State for its expenditure on technical education. These are only a few instances of the secondary purpose of many public fees and charges contrasted with the higher expenditure objectives to which they relate. On the other hand, a minor number of fees and charges return more than the expenditure associated with them. Thus, so-called dog registration fees occasion only slight administrative expense, and are best regarded as a tax, while fees for the registration of deeds and documents greatly exceed the cost of conducting the Land Titles Office. The State's Public Trust Office provides a case where charges are regulated to provide an aggregate return no more or less than the office expenditure. Further, in respect of the grain elevator system mentioned above, the Commonwealth, which manages Australian wheat harvests, pays the State by way of a fee for the use of the system an amount equal to annual operating, depreciation and debt costs.

Providing a measure of compensation for expenditure on the administration of justice, processes of the courts yield a substantial revenue in the form of fees, fines and forfeitures. Unless it otherwise directs, any Act which imposes a fine, penalty or forfeiture is deemed to provide that the amount be paid to the Crown. Hence, a large proportion of proceeds from court actions is credited to the general revenue fund. In many instances, however, statutes contain special directions as to the appropriation of fines

and penalties which they impose. As a result, various governmental agencies, corporate and local government bodies and private persons benefit from court processes initiated by them or on their behalf. The Police Superannuation and Reward Fund, for example, derives a considerable income, second only to that of the general revenues, from this source.[1]

Similar to fees and charges in its relationship to expenditures, a regular volume of receipts is derived from interest. Many agencies contribute to the public income from this source since the State's lending policy covers a wide field of rural, business and developmental activity. Some portion of advances made to various bodies and individuals may have been financed from the Consolidated Revenue Fund, some from moneys held by the Government on deposit and some from proceeds of borrowings. Interest receipts are in part truly of a revenue nature while, in the remaining part, they are a set off to the annual outlay on public debt charges.

[1] See page 149.

Chapter VII

TERRITORIAL REVENUE

Land

The Crown Lands. The public domain over waste lands of the State derives from the first settlement in 1788, when possession was taken of the whole territory in the name of the British sovereign. Hence the expression the "Crown Lands". This title to the lands rests on no uncertain basis—not merely on fuedal theory or legal fiction as in the case of older countries but on the right established originally by the Crown as universal occupant. All private ownership of land in the State is founded at its source, therefore, on the Crown grant. So also, all revenues from alienation or occupation of the public lands are Crown revenues, controlled under the Constitution by Parliament.

New South Wales is a territory of one hundred and ninety-eight million acres. For the purposes of the land laws it is divided into three parts known as the Eastern Division, the Central Division and the Western Division. The two first named are a mixture of arable and pastoral lands, embracing the coastal area and the country beyond to a line described in the Land Acts and running from the northern to the southern boundaries of the State. West of this line is the Western Division, an area of low rainfall, sparsely settled and given over almost entirely to large leasehold occupation.

This division of the State into three territorial units is a survival of earlier administrative practice when land settlement was organised according to settled, intermediate and unsettled districts. Different conditions governed the selection and occupation of land within each division. With the growth of time, the root causes which gave rise to differences between the Eastern and Central Divisions have largely disappeared, and, except for their historical associations, these two divisions have not now a great deal of significance. The Western Division, on the other hand, has retained its distinctive characteristics. It was constituted a separate legislative and administrative unit in 1901, and so it remains, controlled by an *ad hoc* authority known as the Western

Lands Commissioner. Settlement in the Western Division is governed by a special statute, the general content of which is adapted to the role assigned by nature to the lands as an area for large scale pastoral occupation rather than for intensive agricultural settlement.

Of the lands in the Eastern and Central Divisions, totalling more than one hundred and seventeen million acres, approximately seventy million acres have been alienated or are in course of alienation, thirty-five million acres are occupied under various forms of rental tenures, a substantial portion has been reserved for communal purposes or set aside as travelling stock routes, while the residue is waste land, little suited for agricultural or pastoral pursuits. Thus, by far the greater part of the arable lands within the State has now been alienated or virtually alienated from the Crown.

Phases in the History of Crown Land Settlement. A number of considerations, economic, social and political, have entered into the administrative and legislative policy under which this immense land wealth has passed from the Crown to its subjects. All in all, the essential features of Australian land settlement make up a history little different from that of other newly found countries. Three distinct phases which mark its economic and political background and from which have emerged the most important financial consequences may briefly be surveyed.

The first of these was the period of free grants. Commencing at the foundation of Australia, this period was one characteristic of all newly settled countries, for the territory presented a spectacle of land in abundance, of little value in its then unpeopled state, except that it might be offered in free ownership to attract the settlers. If nothing else, the primitive wants of the first settlement were responsible for the initial recourse to the grants system. Dependent upon the arrival of supply ships and faced with the threat of starvation, the early colonists were encouraged to provide an adequate food supply by the offer of land for agricultural purposes. Originally limited to small blocks, the system was expanded as territory was penetrated beyond the early confines, and a gift of land became the reward for many of those who came to the country. During the several decades during which the system prevailed, most of the best lands in the known areas of the Colony came to be owned and occupied by right of the free grant.

No less than the first, the second phase was inevitable in the development of land settlement. It began before the free grants era had run its course. The Colony had expanded, first north and south along the coastal area, next across the mountain barrier to the west, then fanwise over the slopes and plains beyond. Settlement moved faster than could the forces of law and order, and, realising this, the authorities endeavoured to restrict land occupation to a defined area known as the "Nineteen Counties", beyond which the settler was forbidden to go. Thus commenced the era of the squatter, for the purely artificial boundaries fixed by the authorities availed little against the venturesomeness of the land seeker. The pastoral wealth of the country had then begun to unfold. Vast lands from which this wealth was to come stretched beyond the limits of the nineteen counties—they were unknown, unguarded and inviting to the trespasser.

The squatters took possession of large runs of country and depastured their sheep over them, confident that their title to the lands would eventually be recognised. And so it proved. Privileged by their pioneering enterprise and strong in the extent of the lands held by them, they resisted all official efforts for their removal. The administration, impotent to prevent squatting, could only hope to regulate it, and each stage in the process of regulation made the position of the squatter more secure. First by virtue of tickets of occupation revocable at will of the Governor and next by issue to them of grazing licenses the squatters were enabled to acquire a legal status. The fruits of their trespass were not at that stage secure, but they had achieved recognition, and wielding a strong influence in the affairs of the Colony, they were able to carry on and eventually win the fight for freehold purchase of much of the land they had occupied in earlier years by illegal process.

The third phase of land settlement emerged slowly from the squatting age. Actually, it had its beginnings during the free grants period, for the principle of selling the public lands was adopted whilst they were still being disposed of by grant. The sales system competed with the grants system and finally superseded it, but it was not until 1847 that the simple method of outright auction originally introduced gave way to a more varied tenurial system. This was the commencement of the land laws, as they are now known, under which there gradually evolved an orderly method of land selection and settlement reaching to the present day.

The provisions of 1847 were generous in the allowance they conferred on holders of pastoral runs, that is, the squatters, who were enabled to extend their leasehold tenure over the runs, with the right of purchasing a substantial portion of them. Preemption was freely availed of, and those parts of the runs most

valuable for their agricultural potentialities or possessing other advantages were usually bought up. A large land-holding class thus came to the fore. Many years of land strife then followed, this time between the land-holders—the erstwhile squatters—and a new type of land seeker, the selector.

The selector typified the small farming class. He was a product of the changed conditions brought about by the gold discoveries of the eighteen fifties, when many of those who had been attracted to the Colony in search of the metal turned to the land after the gold rush had subsided. Under legislation designed to afford him a chance of purchasing land sufficient for his needs and commensurate with the small capital which he possessed, the selector invaded the runs of the large land-holders. This was the "selection before survey" period, for the land hunger was such that the selector could not await the slow process of land classification and survey. The newcomer was allowed to make his selection at will. His intrusion was unwelcome to the large land-holder, whose devices to resist this threat to his pastoral domain were many and ingenious. Bribery, corruption and recourse to "dummying" became widely prevalent. By devious means the legislation which had been designed to throw the pastoral runs open to the small farmer was in fact turned to the advantage of those who held the runs, and the end of the period of selection before survey saw the large holders strongly entrenched in freehold of much of the land which they had held before by precarious leasehold.

Nevertheless, the legislation, although it fell far short of its objective of the settlement of the public lands by a small farming class, was the forerunner of a land code which, with all its vicissitudes, has never departed from this guiding principle. It took almost a century of expediency, opportunism and strife from the time the Colony was founded before the principle began to take some shape. The then existing land laws were repealed in 1884. A new Act of that year divided the pastoral runs held under lease into two portions, one to be retained by the run holder, the other to be available for selection. The three territorial divisions which still prevail—Eastern, Central and Western—were devised and different selection areas, adapted to the agricultural or pastoral potentialities of each division were laid down. In the same year, a system of local land administration by means of Land Boards was introduced, and, in the train of the Boards, came the Land Appeal Court, to which any decision of a Board could be taken. Finally in 1895, selection before survey gave way to the system of land classification and survey before selection. From then onwards, good faith became an essential in a land

application—a holding was required to be taken and held in the interests of sound settlement rather than for speculation or land greed. The principle of "one man, one selection" thus introduced has remained the dominant idea in land legislation to the present day.

Surveying in their financial outcome these successive eras of free grants, unlicensed settlement and benevolent land laws, it could never be claimed that the State has reaped a return from the alienation and occupation of Crown lands commensurate with their intrinsic worth. All the same, the lands have played an important part in the public finances. Now a declining item of revenue, in earlier years they contributed in substantial measure towards providing the means of government, and the total volume of receipts from their alienation and occupancy, especially during the period of nearly one hundred years since the introduction of responsible government, affords abundant evidence of the value of land in the Australian public domain.

Crown Land Tenure System. Land selection and settlement in the Eastern and Central Divisions of the State are now governed by the Crown Lands Consolidation Act, which, when originally enacted in 1913, consolidated thirty-six Acts passed since 1884. The provisions of the Crown Lands Consolidation Act are interwoven with a number of other Acts based directly or indirectly on land, amongst which those dealing with water conservation and irrigation, mining, forestry, rural finance and rural settlement of war veterans are perhaps the most important. Founded on more than a century of trial and error in land settlement and conditioned by the needs of rural industry in its modern setting, these enactments together make up a most voluminous and complex body of State law. Yet no section of the legislation is more subject to changing conditions, and it is not an exaggeration to say that almost every successive Parliament sees some amendment or addition to one or other of the land or interrelated statutes.

No single factor contributes so much to the volume and complexity of the land code as does the variety of tenures which it offers the settler. As already noticed, some of the Crown lands are in course of alienation, while some are occupied under leasehold. But there are several types of purchase tenures and many more varieties of leasehold. Often the differences between each type are not pronounced and, moreover, the trend of legislation has been to standardise various tenurial rights and obligations. Each type of tenure was introduced with some particular objective in view, whether to cater for the special needs or financial circumstances of land applicants, to devise a form of occupancy

best suited to the productive capacity of a locality, to assist in the development of inferior lands, or generally to cope with some fresh circumstances arising from time to time. A brief reference to the more important tenures may suffice to convey an idea of the system of land disposal and occupation developed in the course of years by the State.

Crown lands may be sold by tender or by auction. Tender purchasing is not extensive, and as to auctions the law imposes a limit to the acreage which can be disposed of in this way during any year. Usually tender or auction purchases are confined to lands within town or suburban localities. In the wider rural areas, the Conditional Purchase, under which nearly fifty million acres have been dealt with, is the oldest and best known type of purchase tenure. Here standard terms are laid down by the Crown Lands Act. These provide, broadly, for a deposit on application, payment by instalments made up of principal and interest, and compliance with certain conditions as to residence on the land and erection of improvements. The Conditional Purchase is essentially a long-term process with interest at a low rate. After payment of all instalments and fulfilment of conditions, the purchaser is entitled to the grant in fee simple.

Because of the small extent of arable lands remaining for selection, the number of Conditional Purchases that mature each year and thus fall out of the public estate is not nearly replaced by new purchases. Receipts from alienations are therefore a declining item of State revenue, so that, with the growth of time, the fiscal significance of the Crown lands tends to be emphasised more and more on the rental side. Part of the rental lands in the Eastern and Central Divisions is held by lease in perpetuity, part by fixed term leases and a residue by permissive occupancy or license. In the Western Division, long term leases prevail, although lands may be disposed of by Conditional Purchase in designated areas within that Division.

Just as the Conditional Purchase is the principal form of land alienation, so also the Conditional Lease occupies an outstanding place amongst lease tenures, similar in its residence and improvement obligations to the Conditional Purchase. Often both forms of tenure are held in the same ownership, in which case the dual holdings are deemed to be one for compliance with residence and improvement conditions. Originally a short term lease, the Legislature has, by successive stages, extended the period until the Conditional Lease tenure has come to be one in perpetuity, and moreover a Conditional Lease taken out before the final change in the law which brought this about may (unless there is some statutory prohibition) be extended to perpetuity on applica-

tion by the holder. Similarly, a Conditional Lease may be converted into a Conditional Purchase and thus ultimately into freehold.

Conditional Purchases and Conditional Leases were the two broad means of settlement and selection of the Crown estate during the free selection era. The introduction of land classification signalised the beginnings of a more varied lease system, conditioned to the needs of a small farming class, and characterised by progressive liberality as to rental payments, improvement obligations and in the scope offered the leaseholder to change to freehold should he so desire. Homestead Selections and Settlement Leases were the first of the new lease tenures to be introduced in the land classification period. The Homestead Selection was intended to meet the circumstances of the small agricultural farmer. It is virtually a lease in perpetuity with improvement obligations confined to the erection of a dwelling house, and, so that the holder may be free to apply his financial resources in developing his property, a specially lowered rental is payable in the early stages. The Settlement Lease, on the other hand, was designed for the settler who desired to mix agriculture with grazing or to take up grazing in a small way. Larger than the Homestead Selection, the area of a Settlement Lease nevertheless was regulated according to the capacity of the land to maintain one family, and conditions of residence applied. Although the lease is for a fixed term, it—subject to home maintenance restrictions—may be extended on application to perpetuity, or it may be converted into a Conditional Purchase.

Nowadays, another lease tenure, the Homestead Farm, occupies the place in new land settlement once held by the Homestead Selection and the Settlement Lease has given way to the Crown Lease. The Homestead Farm did not differ greatly in fundamental principles from the Homestead Selection, nor the Crown Lease from the Settlement Lease, but each in affording greater advantages to the settler than its predecessor was calculated to foster the policy of leasehold occupancy rather than outright disposal of the public lands. Thus the Homestead Farm goes further than the Homestead Selection in that the holder, provided he expends an equivalent sum on improvements, is entirely freed from rental payments during the first five years. The Crown Lease in its original form provided a longer tenure than did the Settlement Lease, although subsequent amendments of the law giving the option of extension of both types to perpetuity have tended to place them on a common footing. Indeed, perpetuity is now dominant throughout the main leasehold system, and, of those leases still held for a fixed term, the holder (subject to what has been said regarding the home

maintenance restriction applicable in the case of Settlement Leases) has a right of extension to perpetuity should he so desire.

Budgetary Treatment of Receipts from Land Sales. How should receipts from sales of the public lands be dealt with in a budgetary sense? Are they properly available for the ordinary services of government, or should they be re-spent only in a way which ensures that the wastage to the public domain from land disposals is made good by the creation of new assets? This question has evoked considerable controversy in the past. Nowadays, with the growth of taxation and the progressive alienation of the lands from public ownership, receipts from the Crown lands occupy a relatively minor importance in the budget. So also the controversial aspect has declined until it is one of historic rather than practical interest.

When the system of selling the lands first assumed prominence in the Colony, the capital idea held sway. It was contended that land receipts should not be regarded as income, but that some part of them should be set aside and invested. As the most profitable form of investment was considered at the time to be the encouragement of immigration, the receipts were appropriated to a Land Fund, to be used, after meeting expenses of land administration, as to one-half on the general purposes of government and as to the other half on immigration of farm labourers, who were to assist the purchasers as well as the tenants of Crown lands in the cultivation and management of their farms.

With the advent of responsible government, control of the Crown lands passed from the Imperial authorities, whereupon the Land Fund was terminated. The newly-created Colonial Legislature was vested by the first Constitution Act with the entire management of the lands and with the right of appropriation over all receipts from them. This Act directed that the land receipts were to be consolidated with the other revenues of the Colony.

During the first half century of responsible government, land revenues were expended on normal Consolidated Revenue Fund services. Although the leasehold system developed in importance, alienations continued to provide the greater part of the receipts, and the Legislature, seeking a means by which this progressive wastage of the public estate might be made good, devised in 1906 a Public Works Fund, into which two-thirds of the annual land yield were to be paid. The expenditure purposes of this fund again gave a capital aspect to the re-spending of the land receipts. The equipment of State establishments, construction and renewal of public buildings, improvements to harbours and rivers and the acquisition of privately-owned lands for public purposes figured largely amongst these expenditures.

The Public Works Fund lasted from 1906 until 1928. It was replaced by a Special Purposes (Revenue) Fund, but this fund, although it perpetuated the principle of hypothecating part of the land receipts, was in the nature of its expenditure services, little more than a division of the revenue fund. The Special Purposes (Revenue) Fund was short lived, and upon its termination the State reverted to the practice of treating the whole proceeds from the Crown lands as income. This practice has remained, and, altogether, it could be said that, from the commencement of land sales to the present time, by far the greater proportion of the receipts has been so dealt with.

Mining Revenue

Mining Occupation. The right of the Crown over the royal metals, gold and silver, is very old in English law and it is enshrined in the State's mining statute. The Mining Act, 1906, states that nothing in that Act, except so far as expressly enacted, shall abridge or control the prerogative rights and powers of His Majesty over gold mines and silver mines. It has already been seen, however, that all land in New South Wales originally belonged to the Crown, so that it is not merely by the prerogative, but also by virtue of the Crown's title as universal occupant, that the mineral wealth of the State enters into the public domain. Nevertheless, it has not always been public policy to perpetuate Crown ownership of minerals. Of the royal metals, only gold is wholly reserved to the Crown. For all purposes, silver is classified with the base metals, ownership of which is determined by the conditions attached to the deed of grant which accompanied the transfer of land from Crown to private ownership. In some instances, mineral rights have passed with the alienation of land; in other instances, they have been retained.[2]

When the entire management and control of the waste lands belonging to the Crown was reserved to Parliament by the first Constitution Act the right of appropriation of the proceeds therefrom, including revenues from royalties, mines and minerals was also given constitutional force. The succeeding years have witnessed the evolution of a wide body of mining law and procedure, commonly known as the Mining Laws of New South Wales; most of which is now codified in the Mining Act, 1906, and regulations thereunder. Described in its preamble as an Act to give further facilities for the development of mining, the Mining Act, 1906,

[2] The Crown Land Act of 1884 laid down the rule that minerals as named in that Act existing in lands alienated after the passing of the Act were to be reserved to the Crown. A similar provision was inserted in later land legislation.

deals extensively with the right of entry into lands for prospecting, and the conditions under which lands can be occupied for mining pursuits. In order to protect public and private rights under any such occupancy, the Act provides for the constitution of Wardens Courts and regulates the jurisdiction and procedure of these Courts.

As a fiscal measure, the principal content of the Mining Act is in its fixation of mining lease rentals of Crown lands and the imposition of royalty over a wide range of minerals and mineral substances, which it names. The consolidation of the mining laws in the enactment of 1906 could be said to have synchronized with an awakened interest by the State in the revenue value of its mineral domain. New South Wales had been slow in turning its mineral rights to full account. Royalty was not imposed until 1884, and then only in relation to coal and shale. The practice of charging royalty on all minerals was not adopted until after the commencement of the present century.

With certain prescribed exceptions, all lands in New South Wales, whether held by the Crown or in private ownership, are open to mining. The right to mine on Crown lands is exercised by virtue of a Miner's Right, which may be obtained from the duly authorised Crown officer upon payment of a small fee for every year or half year in which it is in force, or by virtue of a Crown Lease, which requires the grant of the Governor. Possession of a miner's right gives the holder the right to avail himself of the State's mining laws. Except as against the Crown, the holder may take possession of and exclusively occupy any Crown land for mining purposes, construct mining works thereon and appropriate gold or other minerals found on the land. He may apply for a lease of the land or he may be required to do so. Of itself, a miner's right is not sufficient authority to permit of entry into private lands. However, a holder of a right may secure a permit to prospect in private lands, and upon payment of rent and compensation, he may obtain an authority to enter therein for the purpose of carrying on mining operations. Either form of access must be sanctioned by the duly constituted Crown officer. Any holder of an authority to enter private lands may apply for a lease of the area defined within an authority, but here, as in the case of Crown land leases, the grant of the Governor is necessary.

Mining leases, whether for Crown or private lands, may be issued for a period up to twenty years and renewed thereafter. Maximum lease areas are prescribed for various classes of minerals and mineral substances. Thus, the area of a lease to mine for gold is not, under ordinary circumstances, to exceed

twenty-five acres; for opal, one-half acre; for coal, shale, mineral oils and petroleum, six hundred and forty acres; for any other minerals, eighty acres. All Crown land leases issued under the present Mining Act carry a flat rate rental of two shilling per acre per annum. Proceeds of the rentals are taken into the State's general revenues, while private land rentals—not necessarily fixed at the same rate as Crown leases—are paid to the owner of the land.

Rents from the occupancy of Crown land for mining purposes make up one item of public revenue. Fees from miner's rights, licenses and various processes under the Mining Act are another item. Royalty on minerals taken from Crown lands or from private lands where mineral rights have been reserved to the Crown is a third and by far the largest item.

Royalty on Minerals. Royalty is essentially a revenue measure but the law governing it has not been influenced by fiscal considerations alone. For one thing, the hazardous nature of mining enterprise is a factor in the fixation of the royalty schedule. Until recently rates, generally speaking, had been expressly fixed by the Mining Act at lowered levels for first term leases, while it had been left to the administration to determine the charges, if needs be at a higher level, for subsequent renewals. Mining ventures were thus favoured in their early stages, while well established concerns were required to meet charges commensurate with their more advanced status. So also, the desire to aid development of the mining industry had prompted the Legislature to moderate the royalty scale to the extent of exempting ventures altogether from royalty in any year in which production value did not reach a prescribed amount. Against these revenue reducing considerations, the fact that royalty is simply a form of compensation to the State for the progressive wastage of its mineral wealth has weighed equally with the Legislature in recent years. The later tendency has been to adopt measures expanding the scope and revenue value of this branch of the public domain. The exemption from payments where production does not reach a stated value was abolished by legislation of 1952 and more flexibility was allowed for variation of royalty rates according to changing conditions. The fixation of first term rates was taken out of the statute and made a matter for determination by regulation, subject, however, to ceilings laid down in the amended law.

Various methods, more or less influenced by the type of mineral and also by prevailing legislative or administrative policy, are followed in assessing royalty on Crown minerals. These consist

of a graduated percentage on net annual profit from mining operations (applicable mainly to the silver lead mines at Broken Hill) a percentage of the gross value of minerals won each year (gold, silver and other minerals and minerals substances, but excluding coal and shale) and a flat rate per ton of production, or a sliding rate per ton, varying with the selling price (applied only to coal and shale). Royalty on privately-owned minerals mined within the legal cover of the Mining Act, is assessed at a flat rate per ton of production in the case of coal and shale and at a percentage of gross value in the case of other minerals. Here, however, the State, concerned merely with the supervision of mining for privately-owned minerals, retains only a fraction of the royalty to cover the cost of this supervision, the greater part being paid over to the private proprietor.

It will be observed that all but one of the above methods link the royalty assessment more or less with fluctuations in mining welfare, whether reflected in changes in gross production returns or in net operating profits. The profit percentage method goes furthest of all in this direction. It makes the payment of royalty contingent upon an undertaking's capacity to earn profits and thus leaves open the possibility that no royalty will be received at all. Royalty, when assessed upon gross production value, is, in effect, related to production volume. From an administrative viewpoint, however, the method is uncertain and apt to be anomalous in its application, because, although gross selling yield may be taken as a guide to value whenever minerals are disposed of in a free market, in those cases where minerals are mined for processing into manufactured products by identical mining and manufacturing interests there is no such guide. Of the two remaining methods mentioned above, i.e., the flat rate and the sliding scale rate per ton, the former is the oldest, while the latter method is the one most used in present-day fixations. In an era of rising costs and decreasing money values, the sliding scale rate has the advantage that, while preserving the first principle of royalty according to production volume, it enables the State to participate in any appreciation in production value. Since the basis of royalty under a lease once determined remains rigid for the full lease term, usually twenty years, this is an important consideration.

Returns by mining lessees are made and assessed for each calendar year. After a return is furnished, royalty is payable on demand, but a lessee is entitled to deduct the amount of lease rent paid in the year from royalty payable for that year.

Chapter VIII

FEDERAL GRANTS

Grants in the System of Federal Government

Nature of Grants. For the financial year 1952-53 Federal grants towards the cost of Consolidated Revenue Fund services of New South Wales were £55m., equal to 63 per cent. of the State's total governmental revenue for that year. In addition several million pounds were received as grants-in-aid and assigned to special purpose funds. The figures disclose the extent to which State revenue resources are now centred in Commonwealth subsidy, and, contrasted with the last year prior to uniform income taxation (1941-42), they indicate the subordinate financial position which New South Wales, in common with the remaining States, has come to occupy under federation. In 1941-42, less than 10 per cent. of the State's general revenues was derived from Federal grants.

The system of Federal grants to the States flourishes in Australian public finance despite the acrimonious debates that have marked its growth, the imbalance in Federal and State fiscal powers which it signifies and the condition of dependence upon the Commonwealth to which it has reduced the once financially free States. As yet Federal and State governments have not succeeded in reconciling their angles of approach to the complex problem of financial relationship and as a result the grants system has, for the most part, developed by stages of annual negotiation rather than by long term agreement or understanding. This fact need not obscure the real nature of the system. It is of the essence of the federal union in government and whatever methods may be adopted to vary its working in future, it promises to remain at the forefront of Federal and State financial affairs.

Primarily the need for a grants system springs from the disequilibrium between taxing powers and spending functions assigned to the component units of the federation on one hand and to the Federal authority on the other hand. It is one thing to devise an organisation of government whereby spending functions fall according to their national or provincial environment, but to

adapt this organisation to a division of revenue resources in a manner ensuring that the needs and ambitions of each governing authority are dealt with in just measure is a different and far from simple proceeding. So far the problem has proved beyond the ingenuity of federation founders. Since the Federal Government is concerned with matters affecting the public interest at the national level, the greater taxing power is vested in that Government. This power is not only exercisable in some respects to the entire exclusion of the States, but in those fields of taxation that are shared by the two orders of government the Federal access is superior to that of the States. The framers of the Federal Constitution did not aim at a division of revenue resources between the Commonwealth and the States in measure commensurate with the expenditure obligations to be borne by each. Rather they left the way open for adjustment by means of a system of grants. Hence at the commencement of federation there emerged and has remained a type of Federal payment to the States which, because it affords them a measure of compensation for the sovereignty surrendered in the interests of the federation, may be distinguished by the term compensatory grants.

A second purpose of the grants system which is given recognition in Australian practice is the levelling up of social conditions amongst the several States. It is a widely held principle in Federal finance that the more easily raised and abundant revenues of the central government should be turned to the special assistance of the less prosperous units joined in the federation. Through the Federal tax collecting and redistributing agency, the financially stronger States thus contribute to the development of the weaker ones. This involves a separate type of payment, distinct from the compensatory grant and conditioned in amount to the particular needs of each claimant State. It requires also the institution of an organisation to examine claims by individual States, particularly to evaluate the claims in terms of a State's capacity for self-help, to fix standards of expenditure services and financial conduct appropriate to the States, and finally to inform and advise the Federal Government. To the payments stemming from investigations and reports of this character the term equalization grants might well be applied.

Apart from those of a compensatory or equalization nature, grants to the States may be motivated by Federal policy, as, for example, when they are designed to promote activities of high national welfare or development which a State would not undertake unless subsidised. Such activities are of a nature which the

Federal Government is constitutionally restrained, of itself, from carrying on. Here the grants are often made proportional to State expenditure on the service nominated, or the outlay of the Federal Government may be matched £ for £ with that of the State. The importance of a service, the degree of Federal interest in sponsoring it, the ability of a State to sustain a case for special assistance—these are all factors that determine the relative extent of a particular subsidy. In cases of special purpose grants, standards of performance may be laid down by the Federal authority, and, to this end, the carrying out of a work may be over-sighted. Again, formal safeguards may be sought in relation to the due expenditure by the State of its proportionate share, as well as to the faithful disbursement of funds provided by way of grant.

The system of Federal grants is variously supported and condemned. Thus the Federal Government, seeking to shed itself of the burden of payments to the States, has, at different stages, emphasised the system's demerits. At another time and under different conditions it has expanded payments to the States beyond all previous reckonings. From the State's viewpoint, the system evokes criticism for the loss of financial independence to which it undoubtedly tends. That one Government should raise money for another to spend is held by some to be a "vicious principle", involving as it does the imposition of taxation by one Government beyond its own needs and the re-allocation of this excess for spending by another Government not answerable to the citizen for the tax raising law. It is contended by others that the unification of the money raising and money spending authority is not essential for good government, and that it does not follow that a unit of government best suited to the raising of money is also the one best fitted for the spending of it. So long, however, as the taxing power continues to be centralised while spending functions remain with the decentral State units to an extent beyond their resources the grants system must be expected to prevail. In the present day realities of Australian public finance the merits or demerits of the system must often seem to be a matter of purely academic interest.

Types of Grants. Section 96 of the Federal Constitution directs that "during a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit". As will be dealt with later, other sections of the Constitution, couched in more specific terms, governed the grants system for the first ten years of federation. These provide a guide to the historical background to Section 96. The latter may be noted at

this stage for its recognition of the principle of Federal aid to the States, for, despite what might seem its limitative implications, the section is deemed to confer a permanent as well as a wide grants authority. It has been so interpreted by the Commonwealth Parliament which, fortified by its general powers of appropriating Federal revenues under the Constitution, has enacted a number of grants measures, all founded upon Section 96.

Of the various payments thus made to the States, the first in historical interest is the federation grant, that is to say, the regular annual contribution paid to recompense the States for the loss of the customs and excise power. The federation grant commenced with the inauguration of the Commonwealth, and it has since taken several forms. It consisted first of a fixed proportion of Federal customs and excise receipts, plus any further revenue received by the Commonwealth in excess of expenditure; after a few years it changed to per capita payments; and by a further change in 1927 it assumed its present form of an annual contribution towards interest and repayment of State debt.

Like the federation grant, the uniform income tax grant is in the nature of a compensatory payment. A particular point of difference, however, is that it is in no sense part of the federation compact; on the contrary it came into existence by means of a change in Commonwealth and State financial relations to which the States were unwilling parties. Originally paid to the States at amounts based on the yield from their discontinued income taxes, the grant was later made subject to a formula intended by the Commonwealth to be permanent. Nominally the formula has remained, but changes in the Australian economy have created financial burdens for the States greatly in excess of those foreseen at the time it was laid down. In no year other than the first since the formula was devised, has the Commonwealth, in face of the insistence of the States upon higher sums, been able to restrict the grant to the amount payable under it.

A temporary provision in the Constitution, designed to deal with the particular disabilities of Western Australia under federation was the forerunner of equalization grants, now a regular feature of the finances of the Commonwealth and some of the States. This provision permitted Western Australia for the first five years to impose border duties, subject, however, to prescribed restrictions and to progressive annual reduction in the scope of the duties. Subsequently, special grants were made to Western Australia and Tasmania and later to South Australia. These three States have remained the recipients of equalization grants while New South Wales, Victoria and Queensland have never participated in them.

In 1933 the Commonwealth Parliament enacted the Commonwealth Grants Commission Act, the basic sections of which related to the appointment of a States Grants Commission and the formulation of principles on which grants should be made to necessitous States. The Commission each year inquires into and reports upon: —

(a) Applications made by any State to the Commonwealth for grant by the Parliament of financial assistance in pursuance of Section 96 of the Constitution.

(b) Any matters relating to grants of financial assistance made in pursuance of that Section by the Parliament to any State, which are referred to the Commission by the Governor General.

(c) Any matters relating to the making of any grant of financial assistance by the Parliament to any State in pursuance of that Section, which are referred to the Commission by the Governor General.

The fundamental principles which guide the Commission's recommendation were summarized in its third report (page 75) thus:—

"In the Commission's earlier investigations it was found that the financial system of the Commonwealth, together with certain economic causes, resulted in the growth of inequalities as between the States, and where these were severe some States found it impossible by their own efforts to discharge their functions with reasonable efficiency. In such circumstances there was a case for rectifying the inequalities. The weaker position of some States had been recognized by a system of grants from the Commonwealth to State Governments, but some earlier grants were made without a scientific assessment of the real needs of the States. The special grants recommended by the Commission from 1934-35 have been designed to remedy the financial inequality of the States, and thus to preserve the harmonious and effective working of the Federation. Special grants were determined, therefore, by a strict measurement of financial needs. The Commission concluded that the relative financial position of the States, when analysed with sufficient care and understanding, was the only practicable basis on which special grants could be made. The fundamental principle developed by the Commission is expressed thus —

Special grants are justified when a State through financial stress from any cause is unable efficiently to discharge its functions as a member of the Federation, and should be determined by the amount of help found necessary to make it possible for that State, by reasonable effort, to function at a standard not appreciably below that of other States."

A third type of Federal subsidy encompasses a motley assortment of payments, all designed to assist the States in specific expenditure objectives, and to which the term "grant-in-aid" might therefore be applied.[3] Federal assistance in the construction and

[3] Because the federation grant is allocated to a particular expenditure service, namely, interest and repayment of State debt, it might be regarded as a grant-in-aid. Undoubtedly, such a term would have sounded abhorrent to the federation founders, who regarded the payment as a revenue sharing device, as (looked at from the historical angle) it, in fact, is.

maintenance of public highways represents the oldest of the regular grants-in-aid. Funds for the highways grant are derived from customs and excise duties on petrol, following the maxim that costs of highways should be met by those who use them. Because the States—upon whom the responsibility for public highways falls—cannot impose a tax upon petrol, the grants device is adopted in order to bring about a diversion of portion of the proceeds of customs and excise imposts to highway finance.

Amongst the largest of all the grants-in-aid, the hospital benefits grant stems from social welfare measures inaugurated by the Commonwealth after World War II. The grant forms part of a national hospitalisation scheme, whereby the Commonwealth contributes to the cost of treating patients under the State's hospital system. Originally, portion of the amount received from the Commonwealth was used by the State in augmentation of maintenance subsidy to public hospitals, and portion in aid of construction expenditure. Now it is wholly used for maintenance. For the revenues thus received by them over and above normal State contributions, hospitals care for indigent patients either free or at a reduced rate.

Apart from the highways and hospital benefits grants, the Federal grants-in-aid structure consists, from time to time, of a series of payments more or less transitory in purpose. According to the needs of different periods, the Commonwealth has provided varying form of assistance to the States for rural relief, while the stimulation of employment, gold mining encouragement, the furtherance of technical education, agricultural research, public health and numerous other expenditure objectives have been sought by means of Federal aid. Grants-in-aid are less spectacular from the angle of their individual amounts than the standing grants, but in their variety and the number of State expenditure functions to which they are directed, they are year by year an increasingly important feature of Commonwealth and State financial relations.

The Grants System as a Mark of Federal Fiscal Supremacy. Of itself, a grants system signalises the fiscal supremacy of the government authority that makes the grants over the one that receives it. It has already been noted that the fulfilment of the Federal idea in government requires that the greater financial power should repose in the Federal authority. Should this greater power be subject to no restraints, so that it may be exercised at all times and under all conditions thus making the central government supreme, the real extent of powers exercisable by the component units in the federation may, in effect, be determined by the central

government. Hence State revenue resources are not regulated so much by the mere holding of fiscal powers as by the degree to which the Federal Government leaves it practicable for these powers to be used.

Under the Australian system, the Federal Government possesses unlimited powers of taxation, save that it must not discriminate between States or parts of States. It is prohibited also from taxing property belonging to a State. The States, as already noted, cannot levy customs or excise duties, nor can they impose taxation which interferes with freedom of commerce and trade with other countries or amongst themselves. In other respects, State powers of taxation are concurrent with those of the Commonwealth. But, while this State taxing power is, in a constitutional sense, independent of the jurisdication of the Commonwealth, in reality it can be pressed only to the extent that there are available tax resources after the Commonwealth has exercised a prior right of enforcement. Thus the Commonwealth, by taking to itself the full taxation capacity of the people in any particular sphere, can exclude the States altogether from that sphere. For a number of years, the Commonwealth and States operated singly with income and entertainments taxes, and they continue to do so with death duties and land taxes. The two first named are now imposed solely by the Commonwealth. The high water mark of Federal encroachment upon State sovereignty is to be seen in the income tax development, and present day Federal fiscal ascendancy over the States may be measured by the extent to which the grants system has supplanted their independent activity in this hitherto most important State taxation field.

Proponents of State rights have never failed, at each successive stage in the whittling away of State revenue resources, to contrast the untoward course of Federal and State financial relationship with the assurances and predictions that marked pre-federation discussions. Certainly, few of those who framed the Constitution could have foreseen the extent to which its financial working was to operate against the States. Neither, on the other hand, did they foresee the vast changes to come about in the working of the Federal system with the development of the idea of the social service state and the stresses and strains to which national finances were to be subject through two world wars. All the same it could well be said, such was the spirit in which federalism was founded that, had events been visualised in full, State financial independence would have been safeguarded in a more definite and permanent manner. As federation has worked out, the expansion of the financial domain of the Commonwealth at the expense of the States has become in essentials a matter for

sole determination by the Federal Government. The stage at which the financial status of the States was a matter to be decided by negotiation with the Commonwealth at a common level has long passed, for the Commonwealth attitude to the States is sharpened always by an awareness of its strength constitutionally, and, whether in relation to the State claim to levy its own taxes or for expansion of the grants system, it is the Federal Parliament, in the ultimate, that decides.

At the commencement of federation, the revenue interests of the States were safeguarded by express constitutional provisions.[4] Although these provisions lapsed at the end of ten years, leaving the Commonwealth all-powerful in the fiscal domain, the spirit of the federation seemingly remained as a sheet anchor for the States. It had been averred by those amongst the federation founders who were least apprehensive of the Federal power that the wide revenue-raising authority vouchsafed the Commonwealth was designed only for times of national emergency. The Commonwealth, it was held, would never exercise this authority to a degree prejudicing the traditional independence of the States. Little now remains of the sentiment that gave rise to that belief. In seeking explanation as to how this has come about, it is of interest to look beyond bare constitutional sanctions and, searching for immediate causes, to observe several that have been most potent in reducing the States to a position of overwhelming dependence upon a Federal grants system.

The first of these to be noted is the demand made upon Commonwealth finance by the onset of two world wars. The World War of 1914-18 was responsible for a Federal tax upon incomes, and the Second World War saw the Commonwealth take over the whole income tax field. It is not to be gathered that the Federal Government, even had it not been pressed by war, would have been content to allow income tax to remain entirely with the States. The early Federal reliance solely upon customs and excise provides no guide, and undoubtedly the Commonwealth, confronted with a vast expansion in non-war expenditures, particularly social services, could not have refrained from imposing a tax on incomes. It seems certain, however, that, but for a vital defence situation, the Commonwealth could never have forced the present income tax structure with its accompanying grants system upon the States.

Secondly, the Commonwealth has been encouraged to pursue financial measures affecting State autonomy in the interest of social and economic unity. Some of these measures concern State

[4] See page 98 et seq.

borrowing policy and are discussed under the heading of Public Debt elsewhere in this book.[5] From the revenue angle, a single income tax structure is held to be essential to this unity. It is claimed for the single tax that it allays popular resentment manifest against the dual Federal and State systems, and that its nationwide uniformity is complementary to vastly expanded social service activities undertaken by the Commonwealth on a nationally uniform scale. The Commonwealth contends that social services financing requires that it should continue to have unfettered access to taxation sources which otherwise would be available direct for State governmental purposes.

Thirdly, State importunities, in their very nature, have strengthened the hands of the Commonwealth. The States, whilst resisting Federal inroads upon their independence, have never been hesitant in seeking financial aid, whether by addition to the federation grant, by special grant or by grants in aid of expenditure purposes claimed to be national in scope. Every such application tends to the subordination of the States, for it is within the competence of the Commonwealth to attach any conditions it chooses to a grant, even though the conditions may be of a nature likely to abrogate some State self-governing powers.

Development of the Grants System

Early Years of Federation. A single tariff structure for the whole country and freedom of inter-colonial commerce and trade were among the great objectives of Australian federation. From their earliest days, all the Colonies had imposed some form of customs duty, each according to its own revenue needs or prevailing fiscal thought. This idea of customs barriers amongst themselves fitted oddly into the political organisation of a people united by a common lineage and whose best interests were to be served by an unrestrained system of internal trade. Nevertheless, so long as the Colonies remained disunited, the customs barriers widened between them despite bilateral arrangements for tariff reciprocity, border treaties and efforts towards a customs union. It needed the supreme act of federation to put an end to the conflicting tariff policies.

On the establishment of the Commonwealth, at 1st January, 1901, the collection and control of customs and excise duties passed to the Federal Government, and, with the imposition of uniform customs duties shortly afterwards, trade, commerce and intercourse

---

[5] Chapter XII.

among the States,[6] whether by internal carriage or ocean navigation, became, in the words of the Constitution, "absolutely free".[7] Although the States thus sacrificed their customs and excise revenues on the altar of federation, it had been anticipated by the framers of the Constitution that customs and excise in the hands of the Commonwealth, if equal to the level of collections by the Colonies, would, for some time at least, be greatly in excess of Federal revenue requirements, and it was accepted as one of the compacts of Federation that the excess be returned to the States.

The final draft of the Constitution provided for a ten year period during which customs and excise revenue was to be dealt with on clear cut lines. It gave the States a definite guarantee for this period:—

Section 87. "During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure. The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth."[8]

Not more than one-fourth of Federal customs and excise revenue was to be applied annually for Federal expenditure; the balance was to be devoted to State purposes, either by direct payment to the States or in meeting interest on their public debts as existing at the date of federation.[9] Whether this arbitrary allocation should prevail after the lapse of ten years was left for determination by

---

[6] With the inauguration of the Commonwealth, the members of the federation, known up to that stage as "Colonies", were designated "States".

[7] Section 92.

[8] The need for formal guarantee to the States of a return of some portion of their lost customs and excise revenue was prominent throughout the financial discussions that preceded federation. The three-fourths provision was based on a calculation that the States under federation would be relieved of expenditure equal to one-fourth of the revenue surrendered by them. The formula as finally adopted was suggested by Sir Edward Braddon, a Tasmanian representative, and the draft provision that gave effect to it came to be known as the Braddon Clause.

[9] Section 105 of the Constitution provided that the Commonwealth may take over State public debts. This section, which until its amendment in 1910 applied only to debts existing at the establishment of the Commonwealth, was not given effect, but in 1928 a new section (No. 105A) was added whereby the Commonwealth was empowered to make agreements with the States with respect generally to their public debts. The radical change in Australian debt practice brought about by the Financial Agreement entered into pursuant to section 105A is discussed in Chapter XII.

the Commonwealth Parliament. Thus, the first decade of federation finance was given up to experimentation. The whole question of Commonwealth and State financial relationship was to be reviewed at the end of that term, and, in the meantime, the revenue interests of the States were protected by rigid constitutional formula.

With the principle of State participation in Federal revenues thus firmly established for a period, the Constitution was next concerned with the method of apportioning the revenues amongst individual States. The approach of each State to the distribution problem had been more or less different, for the transfer to a Federal system of customs promised to affect their provincial interests in varying degrees, ranging from a moderate financial upset to complete revenue disruption. In New South Wales, where political sentiment had been unfavourable to protection, the customs schedule was essentially a free trade one. At the other extreme stood Western Australia, with its revenue system almost entirely dependent upon customs. Thus had been posed one of the great financial questions of federation, for, while it was accepted that a tariff policy on a national basis should be left unreservedly to the new Federal authority, there remained the task of devising a method by which the conflicting provincial claims upon the revenue proceeds of the unified system could be dealt with on equitable lines. No single issue obtruded with greater force than this in the prolonged controversy preceding the inauguration of the Commonwealth and nothing contributed so much in delaying the advent of federation.

Again, the issue was partly resolved by constitutional formula and partly left to the discretion of the Parliament. Actually, three distinct stages were visualised. The first of these related to the period from the commencement of the Commonwealth up to the imposition of uniform customs; the second encompassed the next succeeding five years; and the third was one of indefinite duration which might be termed the after period.

During the brief interregnum from the introduction of federation to the commencement of the uniform customs system,[10] visualized as the first of these stages, duties were still collected on interstate imports as well as on imports from abroad, and relative contributions by the States to Federal customs revenue were thus governed by their differing tariff schedules. Section 89 of the Constitution was intended to deal with the situation thus brought about:—

---

[10] 8th October, 1901.

Section 89: "Until the imposition of uniform duties of customs—

(1) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.

(2) The Commonwealth shall debit to each State —

(a) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;

(b) The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.

(3) The Commonwealth shall pay to each State, month by month, the balance (if any) in favour of the State."

Revenue collected by the Commonwealth within a State was credited to that State, while Federal expenditure was debited, (1) by direct allocation in so far as the expenditure related solely to a department transferred from a State, and (2) on a population basis with regard to other expenditure. The balance remaining to the credit of a State was paid to it at monthly intervals.

Known as the "bookkeeping" system, the above method of adjusting Federal and State finances was, with minor variation, laid down for a period of five years. This, the second stage of financial relationship, was marked out by section 93 of the Constitution. In its essential content, section 93 directed that, during the first five years after the imposition of uniform customs, the Commonwealth was to credit revenue, debit expenditure, and pay balances to the several States in the manner prescribed for the preceding period. The five year term was intended to be one of financial transition. Subject for the first time to uniform customs and with a Federal grants system operating in place of the revenues foregone by them, it was envisaged that the States would require this period to adapt their budgets to the changed conditions. It was of the essence of the five year distribution plan that amounts should be allocated to the several States in proportion to the Federal revenues derived from them.

Section 93 left it to the Parliament to decide whether the method of distributing Federal revenues to individual States, as laid down for the first five years of uniform customs and excise, should or should not be continued thereafter. At the end of these five years, the third stage of Commonwealth and State financial relationship visualized by the Constitution-makers commenced. This stage is one of indefinite duration and a treatment of it is concerned with the development of the grants system to the present day.

Per Capita Payments. That the Commonwealth should hand over all surplus revenue to the States was implicit in the

constitutional provision upon which the bookkeeping system was based. But the provision was to hold binding force only for five years, and, although there remained some further period during which not less than three-fourths of customs and excise were to be paid to them, altogether not many years of federation had to pass before the States were to become dependent upon the spirit rather than the letter of the Constitution for their participation in Federal revenues. So long as the bookkeeping system operated, the States were safeguarded, for not merely three-fourths of customs and excise, but the whole body of surplus revenue was paid to them. Thereafter, Section 94 was the sheet anchor of the States, expressing as it did the compact under which they entered the federation: "After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth."

Actually, the surplus revenue compact, with its ancillary bookkeeping arrangement, prevailed for six years. Its operation was modified in 1907-8, when the Commonwealth, having taken over age and invalid pensions from the States, decided to allocate portion of the revenues of that year to a Trust Fund in order to provide for pensions payments and also for expenditure on naval fleet construction to be incurred in the next year. That this action was within the powers of the Federal Government was affirmed by the High Court,[11] and, in a Surplus Revenue Act passed in 1908, the Commonwealth Parliament gave statutory force to the Trust Fund device. From then onwards, Federal surpluses were conditioned by appropriations for future expenditures, as well as by current spendings. The Federal authority could regulate the amount of surplus revenue at will. So far as the States were concerned, Section 94 of the Constitution thus lost its real force. Allowing for the short period still to elapse until the termination of the three-fourths customs and excise allocations, the extent to which the States were to participate in Federal revenues was such as could be pressed in negotiation with the Commonwealth and as the Federal Parliament in the ultimate might approve.[12]

[11] *New South Wales* v. *the Commonwealth*, 7 C.L.R. 179.

[12] "The Commonwealth has never actually disputed the right of the States to any surplus revenue where it can be shown to exist. Care has been taken that there shall be no surplus revenue in the legal sense; but it is contended on behalf of the Commonwealth that Section 94 is an enabling power only and that the Federal Parliament can determine not to pay surplus revenue to the States. While it may be doubted whether the surplus revenue provision was workable or valuable, it must be admitted that its termination was a departure from what was believed to be the intention of the Constitution. It gave rise to criticism and has led to discontent." (*Commonwealth Grants Commission, First Report* 1933. Page 20).

With the passing of the first ten years of the Commonwealth, the dominant participation by the States in the customs and excise revenues came to an end. On the whole, the States had fared well under federation so far as it had gone, but they could not look any longer for distributions at the old level. Apart from a sense of its constitutional strength and its ability, by resorting to trust funds, to avoid revenue surpluses, the Commonwealth attitude to the grants question was conditioned by its growing financial needs. As already noted, age and invalid pensions—the first of the social services, later to have such a prominence in the federal sphere—had been taken over, while defence services were assuming greater shape. Nevertheless, the idea of federation as a compact retained some influence in the thought of the period. Proposals and counter proposals reminiscent of pre-federation discussions marked the several Commonwealth and State conferences. In the end, a system of per capita payments was adopted, the Commonwealth agreeing to pay the States twenty-five shillings for each population unit. A new Surplus Revenue Act, which gave effect to the arrangement, directed that the payments were to continue for ten years from 1st July, 1910, and thereafter until the Parliament otherwise provided. Enacted under Section 94 of the Constitution, the Surplus Revenue Act, with its ten year limitation, followed a referendum whereby the approval of the people had been sought without success to the adoption of the per capita system as the permanent grants formula.

Apart from certain special payments made to several of the smaller States, per capita payments governed the financial relations of the Federal and State governments from the commencement of the Surplus Revenue Act in 1910 until the advent of the Financial Agreement of 1927. It is true that these payments might have been augmented in accordance with the surplus revenue provisions of the Constitution, for the Act of 1910 directed that there be paid to the States in proportion to the number of their people "All surplus revenue (if any)" in the hands of the Commonwealth at the close of each financial year. But, as already noted, it was well within the strategy of the Federal Government to avoid revenue surpluses, and the per capita payments alone held sway. The system gave the States far less than they had been used to during the first decade of federation. To the Commonwealth it meant a progressively increasing proportion of the customs yield and to the States a progressively diminishing proportion. This, however, was an inevitable feature of the considerably expanded customs structure that took place in the per capita period. Critics of the per capita system saw in it a negation of a fundamental principle of federation finance in that the grants favoured the

more populous States and thus were not directed in greatest measure to the lesser developed and therefore the more needy ones.

The Financial Agreement of 1927. The later per capita years witnessed a considerable decrease in the purchasing power of money. Influenced by population increases, grants moved upwards in nominal amounts, but in real value they meant less year by year to the States. Nevertheless, it was from the Commonwealth that most opposition to the per capita system came and, commencing at the time the ten year period fixed by the Surplus Revenue Act of 1910 was nearing a close, efforts were made to terminate the payments. The Federal Government by then had acquired a new bargaining weapon, for it had begun to tax incomes, and proposals that it should retire from the income tax field were held out to the States on condition that Federal subsidy cease. Nothing came of these, but in 1927 matters were forced to a head when the Commonwealth, invoking its determinative powers, decided to discontinue payments on the capita basis. In the same year, the Financial Agreement was signed with the States. The agreement was responsible for a radical change in Federal and State financial relationship. It marked the end of the negotiation period which had commenced in 1910 and had thus prevailed for seventeen years.

Although the Financial Agreement is best known for its bearing upon borrowing operations of the Federal and State Governments, it is noteworthy also for its determination on permanent lines of the long standing customs and excise revenue question. This determination brought the debt structures of the States into the grants system. A sharing by the Commonwealth of State debt costs had been suggested in pre-federation discussions as a means of compensating the States for revenue lost to the federation, and, as already noted, the Constitution gave the Commonwealth power to take over State debts. It was not, however, until 1927 when the Financial Agreement came into operation that the idea materialised.

In providing for the application of the grants to State debt costs, the Agreement gave recognition to a demand prominent at the time for a strengthening of the public credit, the level of which had somewhat declined owing to the absence of Sinking Funds against the mounting State debts. That the Commonwealth, in order to give greater stability to the credit structure, did in fact take over the liability to the bondholders for all outstanding debts may be noted merely in passing, for this turn in Federal and State financial relationship belongs to a discussion of the public borrowings. Except for a portion of debt deemed to be equal to

the value of properties transferred to the Commonwealth at federation, the States remained liable for charges on the debts so taken over.[13] But the Commonwealth agreed to supplement State debt repayments by contributing to Sinking Funds established under the Agreement, and, in addition, to pay an annual sum to be applied against debt interest. The Sinking Fund payments consist of a fixed per centage of debts outstanding at the commencement of the Agreement and of all subsequent loans. They increase with new loan raising year by year. The annual interest contribution was determined, on the other hand, at the amount reached under the per capita system for the year 1926-27; it is therefore a fixed annual sum, payable for the 58 years that the relevant clause of the Agreement is to prevail.

Income Tax Re-imbursement Grant

Introduction of Uniform Income Taxation. For a number of years after federation income tax had been left wholly to the States, but in 1915 the Commonwealth entered the field under pressure of financial obligations created by the first world war. The Australian taxpayer was then obliged to furnish separate returns to Commonwealth and State authorities and to pay two taxes in each year. Unwelcome as this was in itself, taxpayers' objections increased as the aggregate burden of the taxes became more onerous and Federal and State assessment legislation assumed a more complicated form.

What might be regarded as the first phase in the process of change from a dual to a single income tax was concerned only with administrative arrangements for the separate systems. A committee of enquiry had enunciated the principle that, while Federal and State Governments should each remain free to deal with its own taxation laws, the assessment and collection of these should be undertaken by a single authority. Accordingly, in 1923, the State of New South Wales, by agreement with the Commonwealth, assumed the administrative responsibility for Federal income tax in conjunction with its own, and Commonwealth taxation officers were merged in the State department. Costs were met by the two governments on agreed upon terms.

This arrangement prevailed until after the commencement of World War II. By then State income tax law had largely been co-ordinated with that of the Commonwealth and one annual return of income sufficed for the purpose of both taxes. Some degree of standardisation had thus been accomplished, but it

[13] Up to this stage, the Commonwealth had paid the State interest at 3½ per cent. per annum on the value of the transferred properties.

required the urgency of the war situation to complete the evolution to a wholly uniform system.

The varying levels of State income taxation throughout the several States presented a dilemma to the Commonwealth in the early course of war finance. The Federal Government needed to exploit the income tax field to the utmost, but, because it was debarred by the Constitution from differentiating between States, it could not use the full taxable capacity of a taxpayer in a less highly taxed State without imposing an insupportable burden on the taxpayer at the same income level in a more highly taxed State. Faced then with the prospect of an income tax yield less than the national economy could stand and the war situation demanded, the Commonwealth turned to its superior taxing power over that of the States for a solution of the difficulty. By legislation having the effect of ousting the States, it took complete command of the income tax field.

The legislation made clear the intention of the Commonwealth that the States should cease to tax incomes. A number of measures were introduced to bring this about. Side by side with increases in rates which pressed to the utmost extent at each income level, payment of Federal Tax in priority to any State tax was made incumbent upon the taxpayer. An Income Tax (Wartime Arrangements) Act provided for the taking over of State taxation offices by the Commonwealth. In a States Grants (Income Tax Reimbursement) Act, the Commonwealth undertook during every year in which a State refrained from imposing a tax on incomes to pay to the State a specified sum by way of grant.

Uniform Tax Grant in the Post-War Period. Originally enacted as a wartime arrangement and for the efficient prosecution of the war, it was held when contested in the High Court by several of the States that the legislation was within the power of the Commonwealth, not merely as a defence measure, but also by virtue of its taxation rights under the Constitution. Thus fortified, the Commonwealth, after the close of the war, pressed for a continuance of uniform taxation. The arrangement was re-enacted for an indefinite period, and despite protestations, the States, impotent in face of the Commonwealth's superior power to impose its own high level of post-war taxation, were forced to accept the grants arrangement. Uniform taxation was carried over into the peace time economy in much the same form as it had operated for war purposes. A new phase of the grants system, first introduced as a temporary expedient, thus became permanent in the Australian fiscal organization. To the then existing customs and excise grant was added another, different altogether and of far greater political significance.

The tax re-imbursement grant when originally instituted in 1942-43 had not followed any previously tried grants formula. Rather it had been designed to preserve existing standards of expenditure services throughout the several States. It thus gave to each of them an amount equal to the average level of income taxation for the two immediately preceding years, reduced, however, by the estimated saving in administrative and collection costs consequent upon the establishment of a single taxing authority, and also reduced by an allowance for certain social services taken over at the same time by the Commonwealth. In addition, the original Grants Act had included a provision (nullified, however, by later legislation) for payment to the States, with interest, at the termination of uniform taxation, of arrears of State taxes collected by the Commonwealth during the currency of the arrangement.

When at the close of the war the uniform system was renewed, provision for variation in the amounts to be paid to the several States was imported into it. The purely wartime fixations no longer sufficed. It was recognised that the States, with a return to normal conditions, would need larger sums, and, moreover, the idea of a standard nationwide tax carried with it an obligation to ensure that the amount allocated to the States would be apportioned fairly amongst them. Accordingly, the aggregate sum of the grant was raised, and those States upon which the 1942 basis of distribution had pressed the more severely were given a relatively greater share. Enacted in 1946, the second Uniform Tax Grant Act fixed an arbitrary amount for the years 1946-47 and 1947-48, and guaranteed to the States at least as much for succeeding years. But it provided that the aggregate grant was to be increased after 1947-48, first in proportion to population growth and then further in accordance with increases in the wages level over that of 1946-47.

Just as increases in population were to influence the aggregate sum of the grant after two years, so also relative State populations were to enter at the same time into the allocation formula. It was enacted that, eventually (with provision to give a somewhat bigger proportion than a per capita share to the States with less than average population density and with more than the average proportion of children), the number of people in each State would wholly determine relative distributions. But because the first allocations had been conditioned to current budget requirements, the change necessarily had to be a progressive one, and a decade would have to pass before it would be complete. In the intervening years, a gradually diminishing part of the aggregate grant was to be distributed on the 1946-47 and 1947-48 basis and a gradually increasing part according to relative State populations.

Proposed Return of Taxation Powers to the States. Were the grants formula sufficiently well founded to permit of the Federal Government coping with the States' opposition to it, undoubtedly it would be the means of sealing Federal and State financial relationship in the greater part for many years ahead. From the outset, however, amounts payable under the formula found little favour amongst the States and discussions revolving around uniform income taxation have remained at the forefront of the annual Premiers' conferences.[14] In their inability to match rapidly expanding financial responsibilities with federally imposed limits to their financial means the States, following earlier efforts to have their taxing rights restored, passed to suggestions for the institution of a composite Federal and State income tax structure, and finally to claims for a large increase in sums payable under the grant.

The case as put forward by the States is reflected, to some extent at least, in amounts added year by year to Federal payments beyond those contemplated in the formula. From £45 million in 1947-48 the grant over all the States had reached £135.9 million in 1952-53, the latter amount consisting of £108.8 million under the formula and £27.1 million additional re-imbursement.

It appeared likely in the early part of the 1952-53 budget year that the legal power of the Commonwealth to prolong uniform income taxation would again be put to the test, for the State of Victoria, against which the system probably pressed the hardest, had asserted its determination to renew its challenge to the validity of the Commonwealth legislation. Succeeding events, however, made the legal aspect of the question of much less immediate significance. A stage had been reached at which insistence by the States in their mounting claims on the tax pool irked the Commonwealth to an extent prompting a complete change in the previous attitude of rigid adherence to the principle of a single taxing authority. Discussion centred upon the invidious role of the

[14] Originated in 1901, Premiers' conferences are a voluntary gathering of heads of State and Federal governments for the purpose of discussing matters of mutual concern in Australian government affairs. Unlike the Australian Loan Council, which, although similar in composition, is, as discussed in a later chapter, a statutorily created body, Premiers' conferences have no legal foundation. Nevertheless decisions of the conferences have often been of critical importance in the life of the nation as witness the radical changes in the Australian economy brought about by joint decisions of the Premiers during the depression years following 1930. At times since their commencement the conferences have been initiated by the States, Commonwealth Ministers attending by invitation, but they are now combined Federal and State affairs. In recent years their main significance has been in their bearing upon Federal and State financial relationship.

Commonwealth as the tax gatherer, contrasted with the sheltered position of the States as spenders of much of the tax proceeds, and arguments of those who favoured a return to State responsibility and accountability in the taxation field came to the fore. The Commonwealth announced its intention to relinquish the uniform system from the commencement of the budget year 1953-54.

In the course of ensuing deliberations Federal and State governments were confronted with the great difficulties, economic, political and technical, to be overcome in giving effect to the Federal proposal. The social order of the country had undergone a great change. Conditions under which the several governments could pursue their individual taxation policies belonged to the pre-war era. The post-war emergence of a new welfare system under Federal auspices coupled with the Commonwealth's unprecedented peace time expenditure obligations in a defence conscious world pointed to a continuance of a high taxation level in the purely Federal sphere. Reports of discussions between Federal and State governments indicated a wide gap between the margin of taxation means which the Commonwealth was prepared to give up and that desired by the States. A division of opinion was manifest in debate by the Commonwealth Parliament as to the desirability or otherwise of discontinuing uniform taxation. Moreover the States amongst themselves were not unanimous in their attitude to the proposal that their taxing powers be restored. Under these circumstances no decision was reached in conference between the governments, and the perplexing problem of Federal and State financial relationship posed by uniform income taxation was carried over for consideration beyond the 1953-54 budget year.

Chapter IX

THE NATURE OF STATE EXPENDITURES

Influence of Federation

Federal and State Divisions of Expenditure Functions. Just as the influence of federation is the dominant theme in a discussion of State revenues, so also any approach to the subject of State expenditures must first be concerned with the forces which govern the distribution of expenditure functions between Federal and State Governments.

The Federal Constitution defines the functions of the Commonwealth, so that all undefined or "residual" matters remain obligations of the States. Only a few of the functional powers enumerated in the Constitution are described as exclusive and the rest therefore may be exercised also by the States. But State legislation in relation to a concurrent power is binding only in the absence of an inconsistent law of the Commonwealth, so that when the Commonwealth has undertaken a particular service and indicated that its legislation is to be the only law upon the subject the matter passes beyond the State sphere.[15] Similar to the exercise of revenue raising powers, the act of federation made the Commonwealth supreme in relation to concurrent powers. By interpretation and understanding, a large part of the expenditure obligations of Australian Government falls directly and solely upon the Federal authority.

Of these perhaps the most truly Federal in character is defence. The naval and military defence of the Commonwealth and of the several States is amongst the Federal powers enumerated in section 51 of the Constitution while section 114 adds that a State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force. So

[15] "The Commonwealth Parliament may at any time enter the legislative field (in respect of a concurrent matter) and indicate expressly or impliedly that its legislation is to be the only law within the field. It may at any time vacate a field, but so long as it occupies it a State Parliament is excluded to the extent to which the field is covered by Commonwealth legislation." (Report of the Royal Commission on the Constitution, 1929, p. 12).

also the control of the currency is vested in the Commonwealth to the exclusion of the States. The Federal Government, by virtue of its own laws, is also concerned amongst other matters with postal, telegraph and such services, external relations, production and export bounties, upkeep of lighthouses, maintenance of Federal territories, civil aviation (including the operation of airways), immigration and the promotion of trade and commerce with other countries and among the States.

Whilst Australian railways are, in the main, State-owned and controlled, there are also federally operated systems. The federation founders would seem to have intended that rail services eventually should go over to the Commonwealth, for the Constitution provided that the Commonwealth may construct railways, provided the State territorially concerned consents, and it enacts also that existing State-owned railways may, by mutual arrangement, be taken over. The States evince no inclination, however, to give up ownership and control of their railway systems. Of the social services, the first Constitution brought only age and invalid pensions within the Federal power. Permitted by a subsequent amendment to do so, the Federal Government now undertakes a wide range of additional services, including pensions to widows, child endowment, and maternity, unemployment, hospital, sickness and pharmaceutical benefits.

For their part the States are left with weighty responsibilities, pertaining to internal development, education, care of the sick and poor, public health, highways, local government, rural assistance, administration of justice, police and public utility services. "The authority of the States covers most things which touch the ordinary life and well being of their citizens."[16] To this statement might well be added a qualification based on the wide impact of the social welfare era upon the community, since social services in their present day form are federally operated and controlled. It is true all the same that although Commonwealth Government functions in their annual money content transcend those of all the States combined the numerically greater and more diverse part of Australian government activity remains with the States.

Co-operation and Encroachment. The existing division of functions between the Commonwealth and the States is largely the result of historical conditions, for the fact that the States existed before the Commonwealth made it inevitable that only

---

[16] 46 C.L.R. p. 220.

matters of true national concern would be centred in the new Federal authority. A half century of federation has emphasised the trial nature of the first constitutional plan. In an age in which so much stress is placed upon social unity and in which many functions are assuming a national character, the urge is to seek means of enlarging the Federal sphere.

The Commonwealth has signally failed in its efforts to do this by constitutional alteration, although issues put to the people have been concerned, in the main, with regulatory rather than spending functions. If not to the same extent as in the case of revenue resources, the move towards functional centralisation was speeded, at least to a considerable degree, under conditions engendered by war. Defence exigencies during the Second World War and reconstruction measures in the post-war period were responsible for a wide expansion of central government activity, often into avenues of State concern. Apart, moreover, from extensions of Federal spheres of action, based on the defence power, the Commonwealth carries on various services incidental to functions named in the Constitution but otherwise touching State responsibilities, for example, in relation to health, agricultural development, rural settlement, forestry and education.

Sometimes these activities are carried on by the two Governments in co-operation and sometimes independently. While the history of Federal and State relationship during recent years is both one of co-operation and encroachment by the Commonwealth, much of the country's advancement since federation has been achieved by joint legislative action coupled with a sharing of financial responsibility. Matters involving a conflict of interests of two or more States have been successfully resolved by Federal action on a co-operative basis. The agreement for the construction of works for storing and regulating the flow of waters of the River Murray discussed elsewhere in this book[17] is a case in point. The Federal and State Governments have also co-operated in measures for war service land settlement, immigration, marketing of primary products, scientific research, highway construction (especially in more remote areas), housing and the linking of State capitals by uniform railway gauge.

Perhaps measures instituted by the Commonwealth and New South Wales for the uplift of the coal industry in that State are amongst the most noteworthy instances of the blending of State legislative powers and Federal financial means in co-operative effort. The problem of the industry was one to be faced at the national level but the Commonwealth could not do so under its

[17] Chapter X.

constitutional powers, since these were confined to matters relating to interstate and overseas trade. While, on the other hand, the more essential powers resided in the State Government, that Government did not possess the necessary financial resources. The two Governments accordingly passed legislation for the establishment of a Joint Coal Board, the State vesting in the Board most of the powers necessary for its task, the Commonwealth making available most of the finance. Contributions to the Board's administrative costs are made in equal parts each year by the two Governments. In addition, the State, subject to a fixed annual maximum, pays pound for pound of Commonwealth contributions towards a Welfare Fund controlled by the Board. All further financial requirements are met by the Commonwealth.

The spirit of co-operation thus evinced by the Commonwealth was entirely absent, however, in that Government's approach to the problem posed by the inability of the States of Victoria and New South Wales to agree as to the best means of utilizing the waters of the Snowy River. Here the issue was resolved by a Commonwealth decision, made without reference to the States, to create a statutory corporation empowered to undertake works necessary for a vast scheme of water storage for power and irrigation use. The Commonwealth thus invaded the field of internal development hitherto the domain of the States. Legally the Federal Government rested on the defence value of the project, claiming at the same time the virtue of superior access to the technical resources and financial means necessary for the completion of the work within a period in keeping with its national significance.

Apart from the action of a unilateral character so taken by right of defence powers under the Constitution the indirect influence of the Commonwealth in the State field of internal development is also to be noted. Since internal development is largely financed by loans, the Commonwealth indirectly shares in the cost by contributions to interest on State debts and to the sinking fund for debt repayment. Except by voluntary State submission to a national system of works co-ordination, the Commonwealth cannot control the content of State development programmes. But the Federal Government is, in the ultimate, the authority for the determination of public investment policy and it is the dominant partner in the body that regulates the flow of loan funds to the States. It is thus in a position to exert an influence over the volume of developmental activity undertaken by a State.

Broadly speaking, the concept of federalism provides a guide to functions that are truly national and to those that are best

left to decentral units. In the Australian organisation, the extent of Federal functions depends, in many respects, upon precise constitutional sanctions, while alterations to the Constitution having the effect of enlarging these functions are matters for referenda. To all appearances, at least, the functional powers of the States rest upon secure grounds; they are less susceptible to unilateral action by the Commonwealth, and, apart from those developments in national government activity of a kind not foreseen when federation was introduced, they conform more to the early Federal idea than is the case with the revenue power. At the moment, however, the States present a picture of dis-equilibrium between spending responsibilities and financial means, and only time will tell how this is to be corrected within the Federal plan. Given the dominant fiscal powers, the way is open to Federal encroachments upon State expenditure authority.

> "The financial relations between the component States and a Federal Government may not take up many of the pages of a Federal Constitution, but they are the chief determinants of the character of the Federation. The conferring of large powers upon the Central Government may be of little avail if no means of revenue are provided sufficient to put them into action. On the other hand, if wide financial resources are in the hands of the Central Government, a way will always be found to extend its powers even without a formal amendment of the Constitution."[18]

Since the Federal powers enumerated in the Constitution include one to deal with matters referred by any State or States, it is within the legal competence of the States to transfer any expenditure function to the Commonwealth. Thus, the States, of their own volition, may enlarge the Federal domain. A function so transferred is exercisable, however, only in relation to a State making the transfer or to a State which afterwards adopts the relevant Federal law. In 1942, a convention of all States agreed to refer a number of powers to the Commonwealth for post-war reconstruction purposes. It is symptomatic of their attitude to the powers issue that, in the outcome, only two State legislatures enacted the full convention plan. Generally, the States are loath to give life to the transfer provision of the Constitution. They are not averse to shifts of financial responsibility in matters of national concern, but they regard the grants-in-aid device, rather than an outright gift of powers, as the most appropriate means to that end.

State Development

Nature of Development Expenditures. A multifarious assortment of services flows from the exercise of State expenditure

[18] Professor Giblin, *Economic Record*, November, 1926.

functions. The administration of these services calls for an extensive organisation in the form of ministerial departments, subordinate agencies and separate authorities, and their detailed exposition runs to many pages of the budget and other reporting documents. Underlying the public expenditures, however, there are but a few fundamental purposes to which all government activity is, in the ultimate, directed, and it is by these broad functional headings that the whole body of State expenditure may be classified. It is intended, in the course of the present treatment of expenditure services administered by New South Wales, to deal with them in such a manner. The first heading to be noted consists of expenditures related in one way or another to the development of the territory, the promotion of means for utilising its physical wealth and the conservation of its national resources.[19]

State activities within these categories occupy an expansive field and they embrace numerous types of projects and services. In the Australian environment, the pursuit of an energetic developmental programme is a vital matter to governments and it goes without saying that public outlays from the earliest days have been directed in relatively large proportion to this purpose. Internal development is peculiarly a matter concerning the States. The emergence one after another of the several units of Australian government which later became the States, naturally encouraged a provincial outlook to developmental policy. From such beginnings, and from such an attitude, springs the claim of the States to regulate their internal development, each according to its own measurement of needs and spending capacity. Union within the Commonwealth was responsible for no great change in this outlook, for the Federation gave recognition to the fundamentally State character of the developmental obligation. Hence its present day importance to the State. Because each successive stage in the growth of the country only serves to intensify the demand for developmental activity, there is an increasing pressure upon State finances in meeting costs of new services, as well as in maintaining those already established.

Different conditions at different periods are conducive to a variety in types of developmental projects. Present-day demands for expenditures on works of advanced national development may be compared with the "roads and bridges" outlays prominent in the past century; the buying back of lands once owned by the Crown, so that they may be re-allocated for more intensive rural settlement, offers a striking contrast to early land developmental measures discussed in a preceding chapter; in an age of motor

[19] See also the next succeeding chapter.

transportation, the system of opening up remote areas by public highways has largely superseded the developmental railways policy of a few decades ago. So also, advancements in modern techniques present new avenues for government spendings. Large scale works for water storage and irrigation, re-afforestation and soil conservation, for example, are of comparatively recent origin amongst State financial outlays.

Organisation and Financing. Because developmental expenditures, of their very nature, yield long-term utilities or other benefits more or less permanent in duration, they attract, in large measure, the capital system of financing. The scope and extent of State developmental activity is to be seen, however, in a combination of loan and revenue spendings, just as the real cost to the budget is to be measured by interest and repayment charges, conjointly with expenditures met direct from the revenue fund on works of a developmental character.

From technical considerations, as well as for convenience of organisation, the development and maintenance of State resources is administered by a number of differently constituted government agencies, each specialist in character. Public departments play their part, and a large portion of routine departmental spendings relates to the developmental and maintenance function. But where expert control, long range policy and a permanent financial structure are involved, administration invariably is given over to a separate body. Principal State developmental agencies in railways, highways, ports, public utilities, water conservation and rural financing are controlled by *ad hoc* authorities.

A more detailed treatment of each of these undertakings, appearing elsewhere in these pages, gives point, for the most part, to their business character. The fact that they fit into the Public Business Enterprise classification need not obscure their significance in the overall plan of development. At the outset, the State embarks on the capital expenditures necessary to set up the undertakings, and it is from the enhancement these expenditures give to the general resources that the undertakings derive their developmental characteristics. On strictly business lines they might be expected to return direct revenues equal to their annual costs, including debt charges, thus freeing the State from need to share in their operating outlays. However, they often fail to do so. The railways, for example, are subsidised from the State's Consolidated Revenue Fund in consideration of the greater revenue capacity they give to that fund; outports are accepted for their developmental value, so that in their net financial result they are a burden on the same fund; on similar grounds, water conservation

and irrigation projects are not required, as a rule, to meet charges for interest on capital. Highways do not come within the category of business undertakings in the manner of other transport agencies. Associated with them there is a considerable volume of revenue in the form of motor taxes, the re-spending of which on highway construction and upkeep gives them a distinct place in State development and maintenance outlays.

Railways and other undertakings referred to above occupy an outstanding place in State development, but they by no means exhaust the full range of such expenditures. There is to be noted a number of other services of varying importance, recurring and non-recurring. The promotion of agricultural and pastoral activities engages the attention of a large State department, the functions of which extend to experiment farms and nurseries, and to scientific research in furthering the interests of the several divisions of agricultural and animal industry. Community water supply undertakings are fostered by subsidy from the Treasury, as are extensions of rural electricity supply services. Grants to local government, establishment and maintenance of tourist resorts, immigration, encouragement of rural settlement, mining and re-afforestation are regular annual charges against either the capital or revenue budget.

Expenditure on the Social Order

General Considerations. Since all government activity is directed to the general welfare of society, the term Social Order, when used in classifying public expenditures, might be considered an all-embracing one. Even in a narrower connotation, such a grouping would include many services. For convenience, it is proposed in the present chapter to bring together a section of State expenditures, the most important of which, because of their newer modern vogue, is considered to be the so-called Social Services. Other expenditures related to the social order and concerned with the upkeep of law and order in its several phases do not provide any great scope for immediate discussion. They are merely noted in passing. Education, a weighty social responsibility of the State, is dealt with separately.

The many avenues of service to which governments are nowadays committed in the interests of social welfare give a variety, and, in the aggregate, a costliness to expenditures on social services. The term Social Services, when applied to public finance, is commonly understood, and it is used in expenditure reporting to indicate a particular type of outlay, the purposes of which, broadly stated, are social amelioration and uplift. Apart

from education, social service expenditures, as so regarded, consist in their major content of measures for the levelling up of living standards, for the relief of the poor, the sick, the aged and the afflicted. The introduction of many additional avenues of government spending in these directions during recent years has imparted a new breadth to expenditures connoted by the term.

In Australia, responsibility for the more modern social services has been assumed by the Federal Government. Some of them had been commenced by the States, only to be taken over by the Commonwealth. Thus Family Endowment and Widows' Pensions, now prominent in the Federal sphere, were at one time administered by New South Wales. Of the present organisation of social services in general, it may be said that the newer types are controlled by the Commonwealth, while a residue of liability, concerned with longer-standing services, rests with the States.

State revenues are committed in substantial degree each year to measures for care of the sick and the poor. Modern public health practice calls for an expanding expenditure on scientific research, inspectorial services, subsidy to health movements, and, above all, on the upkeep of sanatoria, mental institutions and public hospitals. State budgets to-day are presented with a pressing problem in meeting demands of hospital finance, and, in view of the importance of the subject, a special treatment is given to it elsewhere in this chapter. The cost of poor relief fluctuates according to contemporary economic conditions. In the period of depression from 1930 onwards, for instance, the burden of social services and unemployment relief led to the imposition of special taxation by the State. Even during the best of times, sustenance of the poor calls for a continuing public outlay in providing for those who, through various causes, are unable to help themselves. The upkeep of homes for the aged, endowments and grants to benevolent and charitable bodies, food relief in distressed cases and assistance to families under the Child Welfare laws are recurring expenditures within this class. A residue of its original Widows' Pensions Scheme, consisting of Children's Allowances, for which the Federal Act did not make any provision, is retained by New South Wales. The care of aboriginals, involving expenditure on their segregation, schooling and subsistence, falls upon the State budget.

In addition to these standing services, New South Wales has assumed some financial responsibility in welfare measures pertaining to industrial life. A regular annual subsidy is paid to Miners' Pension funds established by State law. Employment hazards in general are dealt with by accident insurance legislation,

and the State is committed to expenditure in this direction only so far as concerns its own employees. However, certain types of "dust" diseases have attracted special concern, in that the State has adopted a practice of sharing in the initially heavy costs of establishing compensation funds. One half the payments made to a defined section of beneficiaries under legislation dealing with pneumoconiosis, prevalent amongst workers in Broken Hill lead mines, is met by the Treasury. So also the State participates in the cost of compensation for silicosis contracted by operatives in the sandstone industry, and it has contributed to special relief for which it has legislated in respect of fibrosis in coal miners.

Amongst other State functions appertaining to the social order, two of the most prominent in housing and superannuation pensions have been made the subject of separate chapters. The maintenance of law and order generally is reflected, from the expenditure angle, to the greatest extent in salaries and wages disbursements, since this function involves an extensive personnel by way of police, judiciary, prison guardians and administrative officials. The upkeep of prison institutions and of institutions for child delinquents is the principal other State expenditure under this heading. Industrial law and order is the concern of a separate department of State. The processes are mainly regulatory and investigatory, and again are predominantly a matter of salary and wages outlay.

The State Hospital System. There are, broadly speaking, two divisions of hospital finance and administration in New South Wales. One might be termed the State Hospital System and the other the Public Hospital System.

State hospitals consist of a number of centralized institutions which care for particular types of ailments, and for which the Government is wholly responsible. As a direct provider of hospital services, the Government is concerned with the care of the mentally afflicted, the infirmity of old age, the erection and upkeep of sanatoria for treatment of tuberculosis, and generally with institutions for those cases requiring segregation from the public. Costs of upkeep are met by annual votes from the Consolidated Revenue Fund. There is some set off by way of receipts taken into the fund from fees paid on behalf of inmates,[20] contributions by the Commonwealth towards the maintenance of pensioner patients, and to a minor extent from proceeds of industries carried on at mental hospitals. Only a small proportion of the total expenditure is recovered, however, from these sources, and in the net result,

20 Now met in the main from Federal Social Service benefits paid by way of grants to the States.

the upkeep and maintenance of State hospitals is a regular annual burden upon the general revenues. Capital installations likewise are an expense of almost regular annual incidence. In the past, expenditure on buildings and other permanent services has been financed to a degree from the general revenues, but the State, whenever circumstances have made it necessary or desirable, has not hesitated to resort to the loan fund for this purpose.

Public Hospital System. Public hospitals are distinguished from State hospitals in a financial sense, in that they are only partially the concern of the Government. The Public Hospital System consists of a varied assortment of hospitals, including general, metropolitan, base, district and small town institutions, with auxiliary services, and it might, in turn, be divided into two sections. Firstly, there are hospitals incorporated under the State's Public Hospitals Act. These are controlled by local boards of management, but subject to the supervision of the Government, and although possessing their own sources of income, they are dependent in varying degress upon assistance from the public funds. Secondly, there are separate institutions, that is to say hospitals not incorporated under the Public Hospitals Act. Separate institutions consist for the most part of hospitals conducted by religious and fraternal organisations, but they also include a number of larger hospitals constituted by special statutes. They may be assisted from the public funds and, during any year in which assistance is applied for or granted, separate institutions are subject to the general scheme of supervision laid down by the Public Hospitals Act.

The Public Hospital System was for long a mixture of voluntary community effort and government aid. Its financial structure was founded on a combination of resources, consisting of private philanthropy, organised contribution schemes, fees for services rendered and subsidy from the public funds. These elements were not wholly stabilized and in reality public hospital finance for a number of years has been in a stage of transition, particularly in relation to the yield from private philanthropy. Revenue from subscriptions, donations and endowments now occupy a relatively minor place. Although this fact may be attributed in large measure to purely local causes, the changed community outlook to the problem of hospital finance is not peculiar to New South Wales. Throughout the world the tendency is for the flow of private benevolence to fall away and for financial responsibility, both capital and maintenance, to pass to an increasing degree to the Government.

Hospitalisation to-day is a highly organised public service requiring a large and expanding capital outlay and a regular flow

of finance for maintenance and upkeep. In earlier periods hospitals occupied a lesser place in community life and their financial needs were relatively small. Local effort, of which gifts and bequests by the more wealthy citizens were an important feature, largely sufficed as a means of providing funds for capital and maintenance purposes. Nowadays the picture is different. Advancements in medical and surgical science and improvements in hospital technique have imparted a new status to the public hospital, heightening the popular demand for treatment. Furthermore the provision of extensive emergency hospitalisation facilities is an essential of modern life, particularly to cope with the increased accident rate, due to road traffic saturation and industrial activity. Altogether the financial requirements of hospitals are now beyond their charitable resources, even if these could be maintained at the old level, and as a result there has emerged an insistent demand for a method of finance which would be less dependent upon the vagaries of local effort and private philanthropy. At times this demand has crystallised into a strong advocacy for a system of complete nationalisation, backed by a special tax or other systematic fund raising measures, spread over the whole community.

Nevertheless, hospital policy in New South Wales aims at the preservation of the best features of the old system, conjoining voluntary local effort and private giving with a more intensive exploitation of the business revenues of hospitals, and supplemented in the final resort by subsidy from the public funds. Such a principle of hospital finance is implicit in the State's Public Hospitals Act.

Hospital Administration and Financing. The Public Hospitals Act provides the framework of hospital administration, supervision and finance. It gives each hospital which it specifically names, a corporate existence, with power to hold real and personal property, to sue and be sued, to invest its funds and, with the approval of the Governor, to borrow by way of mortgage or otherwise. Incorporated hospitals are managed by boards of directors partly elected by subscribers and partly appointed by the Government. Subject to the retention by the Government of inspectorial, advisory and certain directional powers, local boards enjoy a large measure of autonomy. But all or any members of a board may be removed by the Government, which, notwithstanding the provisions for the partly elective board, may make all the appointments and also may take over the full control of a hospital.

In the exercise of its powers of supervision the Government acts through a Hospitals Commission, set up under the Public

Hospitals Act. The Commission has at its disposal a Hospital Fund, kept in the Treasury. The amount voted each year from the general revenues towards the maintenance and upkeep of public hospitals and other special allocations by Parliament for hospital services are taken into the fund, while disbursements for these purposes (not necessarily made during the year in which the money is provided) are controlled by the Commission. The Hospital Fund is operated partly on the circulating principle in that receipts on account of repayable advances made to hospitals are taken into it for respending, and the fund is also the means by which the Commission meets its own administrative costs, including expenditure incurred on the inspection and general supervision of hospitals.

One of the principal functions of the Hospitals Commission is to allocate and distribute government subsidy and to supervise its expenditure. For this purpose the Commission is required to report to the responsible Minister as to the sums required to meet the needs of hospitals; it has to determine what hospitals should be subsidised and the amount that should be granted to each. Prior to the present Public Hospitals Act subsidy had been paid pound for pound of charitable income, which meant that the extent of the Government's assistance to any hospital was regulated largely by the hospital's efforts to raise revenue from subscriptions and donations. This system had at least one advantage in that it encouraged a spirit of local self help. But it ignored the principle of relative requirements, and often a hospital in a prosperous district, supported by wealthy and generous patrons, was paid more subsidy than it could economically spend, while a less favourably situated hospital did not receive sufficient means to meet its needs.

The Public Hospitals Act prescribes a wider approach to the question of subsidy. Under the Act the Hospitals Commission is obliged to take the daily average of occupied beds as a yard stick, with due regard to a number of other considerations, including a hospital's ability to collect fees from patients, its general financial position in relation to probable requirements, capital and maintenance, the nature and extent of the services which it renders, and the quality of its management. The Legislature, whilst recognising the claims of hospitals for assistance from the public funds gives expression to a widely held maxim of hospital finance, namely that subsidy should be secondary to other income resources and that these resources should be exploited to the fullest extent before the Government is called upon to make a contribution.

Until the Commonwealth in 1946 brought hospital treatment for the community within its social services, systematic contribution schemes, patients' fees, and to a lesser extent public benefactions had been the sources of hospital income, apart from Government subsidy. Under the contribution schemes, members of the public were given free hospital treatment in consideration of regular payments at weekly rates. To the individual, systematic contribution schemes were a form of insurance against the expense of hospitalisation. The schemes resulted in diffusion of some portion of hospital costs over wide sections of the community, and from the viewpoint of the hospital they were a favoured means of income, contrasted with patients' fees, because they were less vagarious. Revenues from systematic contributions played an important place in hospital finance, particularly in industrial areas where the existence of large employment units facilitated the organisation and collection of contributions on comprehensive lines.

So far as concerns patients' fees the Public Hospitals Act directs that no destitute person is to be refused relief at a public hospital by reason of inability to make any payment. The Act also empowers local boards to remit or postpone payment of fees. Otherwise, every patient (subject to whatever may be laid down to the contrary by the Commonwealth as a condition of grants to the State for hospital purposes) is liable to contribute towards the costs of hospitalisation according to his means. In order to regularise the financial relationship of hospital and patient, hospitals had been segregated into three sections, one the public ward dealing with those patients who contribute the smallest amount or nothing at all towards the cost of treatment, another the intermediate ward, where patients paid something up to the full cost of maintenance, and a third, the private ward, where patients paid the higher costs of private accommodation and treatment. Thus the public hospital by a system of differential accommodation was designed to cater for the range of citizens, from the indigent to the wealthy, who availed themselves of its benefits, and endeavoured to attain the objective laid down by the statute of payment for costs of hospitalisation according to a patient's means.

This organisation of hospital resources underwent a revolutionary change, however, when the Federal Government's Hospital Benefits Scheme commenced. Introduced by agreement between the Commonwealth and the State, the scheme provided that no fees were to be charged to patients in public wards and that non-public ward fees were to be reduced by a fixed sum per day. The Commonwealth made an annual payment to the State based

on the income thus lost by hospitals. Under the original agreement the State was obliged to set aside portion of the payments in a Trust Fund to be expended on hospital works of a capital nature. The capital expenditure provision, however, was later dropped, leaving the State free to take the full Federal grant into the Consolidated Revenue Fund. Against this gain to the general revenues the State was obliged to enlarge its subsidy allocation in order to make good reductions in hospital receipts from patients' fees and systematic contribution schemes, as well as from a decline in private benevolences that naturally accompanied the operation of the benefits scheme. Following a subsequent change in Commonwealth policy, the system of payment by hospital inmates was re-introduced, the Commonwealth undertaking, as a means of encouraging individual self help, to subsidize an inmate's costs in cases where systematic contributions had been made to a recognised hospital insurance fund. At the same time, however, the Commonwealth continued to make its hospitals grant to the State.

If hospitals are to provide for capital works without assistance from the central Treasury, they need an extensive private benevolence, for patients' fees as a rule are calculated to meet maintenance costs only, leaving little or nothing towards a fund for expenditures on capital assets. A great deal of the capital equipment of public hospitals in New South Wales has been financed in the past from the proceeds of private philanthropy supplemented by allocations from the State loan fund. Here, as with maintenance services, the State endeavours to foster the system of local self help. Hospital boards are empowered, with the approval of the Governor, to borrow for capital purposes, repayment of the loans with interest being guaranteed by the State. The guarantee device has served to provide hospitals with capital equipment which they would not have been able to acquire from their own resources. But in the ultimate result it has not been instrumental in shifting the burden from the central to local authorities, because, owing to the inability of hospitals to meet repayment instalments, a considerable portion of the cost of works financed in this manner has had to be met from the State general revenues, upon which the guarantees are secured.

Education, the Arts and Public Recreation. The New South Wales Public Instruction Act directs that education by the State is to be free, secular, and compulsory up to a school leaving age of fifteen years. Not only is education oldest and foremost amongst State social services, but it ranks as one of the most costly State expenditure functions. For 1951-52, almost 25 per cent.

of expenditure from the general revenues was incurred on education in its several forms—primary, secondary, university and technical. To this, there is to be added the cost of sites, buildings and other permanent utilities financed from the General Loan Account.

Teachers' salaries, upkeep of schools and administration necessarily absorb the greater part of the expenditure, but education outlays extend also to many ancillary services and extension movements. The training of teachers is, with scholarship allowances to trainees, a substantial expense item. Grants to educational and cultural societies and adult education services are lesser charges, but they are regularly recurring ones. The State undertakes the cost of conveying children to school in country areas. It also uses the schools organisation in promoting measures for national health, outstanding amongst which is the practice, first introduced in poorer areas but now widespread, of distributing milk free to children attending school. Originally financed by the State the cost of free milk service is now met by the Commonwealth by way of grants to the State.

Secondary education keeps pace with primary education in its increasing demand upon the State budget. Admission to a course of secondary education requires the attainment of a standard of primary education, after which the course is free. In special cases, students are assisted by bursaries, administered by a Bursary Endowment Board, which receives an annual allotment from the general revenues for payment to a Bursary Endowment Fund under its control. Allowances of this nature extend to students in non-State secondary schools registered under the Endowment Act.

University finance is a mixture of private endowment, investment income, fees, and subsidy from the public funds. The University and University Colleges Act permanently appropriates £125,000 annually from the State's general revenues by way of endowment for the Sydney University. Usually the statutory figure is supplemented by much larger sums and the Legislature also has provided for assistance grants to the extent necessary to make good any annual deficiency of a University College established outside the Sydney Metropolitan Area. Other minor grants complete the scheme of State contribution to University finance. In the post-war period, Federally sponsored measures for higher education of ex-servicemen, involving their participation in University courses, brought the Commonwealth into this field and it now regularly contributes annual sums to the State partly by way of fixed amounts and partly by way of amounts matching State grants in aid of University finance.

Befitting its modern importance, technical education shows in recent years the most spectacular rate of expenditure increase amongst the several branches of educational activity in New South Wales. In addition to its longer standing services under this heading the State has now set up a University of Technology. The Federal Government participates annually in technical education expenditures while buildings and equipment financed from Federal funds have added in substantial degree to State technical education facilities. So also contributions from industrial organisations have benefited the building and equipment programme. Unlike other forms of education, the cost of technical education to the State budget is relieved to an extent by students' fees.

The Public Library is endowed by a permanent appropriation to be devoted to book purchases, while any additional book expenditures, together with costs of running the library, are met by annual vote. Subject to a prescribed minimum of self help, Local Government Councils are subsidised by the State in the provision and extension of library facilities. Several other institutions for promoting education, science and art wholly come within the range of State expenditures, for example, the National Art Gallery, Museum, and Museum of Technology and Applied Science. The Conservatorium of Music derives some income from fees and concerts, but its expenses are in lesser degree a charge upon the budget. In addition to expenditure under this heading, the State makes an annual contribution towards costs of maintaining the Sydney Symphony Orchestra.

Botanic gardens are included in expenditures of the State Department of Agriculture, but parks and public recreation grounds come, for the most part, within the domain of Local Government or specially constituted trustees. In point of financial independence, the Zoological Park is singular amongst trustee bodies, for although its construction required recourse to public funds, annual income suffices to meet maintenance outlay. In other cases, park trustees are either wholly or partially dependent upon a system of yearly Treasury grants.

Assistance to Local Government.

Organisation of Local Government. The financial relationship between State and Local Government hinges almost entirely upon a system of endowments, grants and subsidies from the Treasury. By Local Government is meant that part of the public administration and finance which is controlled by locally elected bodies of councillors, within the general framework of the Local Government Act. There are other types of local revenue

raising and spending services—for example, Pastures Protection Boards—but this discussion is not concerned with them.

The existing form and domain of Local Government as it is understood in New South Wales may be said to have commenced with the introduction of a Local Government (Shires) Act in 1905. The beginnings of the system can be traced to a much earlier date, contemporary almost with the grant of self-government. Of the period prior to the 1905 enactment, however, it could be stated that it was largely experimental and marked by a tardiness to extend Local Government beyond a narrow domain, just as the development of the system generally has been characterised by a gradualness in measures for enlarging the sphere of municipal life.

Prior to self government an effort had been made by way of Imperial Statute to set up a system of locality administration and finance in the form of District Councils. Singularly enough, the Councils in two of their functions—police and education—went closer to the concept of Local Government, as practised in other countries, than has any form subsequently devised by the State. The Councils were not a success, and eventually they were dissolved. The city system of government also emerged at the same time as the Councils, the City of Sydney having been incorporated under special legislation in 1842. Under self government, such powers that local bodies have acquired, have been the grant of the State Parliament. Early Local Government measures enacted by New South Wales did not make for widespread application of the system. Incorporation was not compulsory, and because of the inability of country areas to assume the financial responsibility, Local Government was confined to urban centres. At the time the Local Government (Shires) Act, 1905, was passed one per cent. only of the total territory was incorporated as municipalities.

With the exception of a well defined and largely unsettled section, known as the Western Division, the 1905 enactment extended the sphere of Local Government over the whole State. It provided for the introduction of the Shire system to rural areas, so that Local Government units came to be made up of two types, i.e., municipalities (including their larger variants the City Councils) and shires. The former embrace compact population groups within towns and throughout the country. Shires are mainly large tracts of sparsely settled land in which population centres often do not extend beyond the small town or village status. Contrasted with shires, municipalities enjoy a much higher rating authority, and they also possess wider borrowing powers.

Shires are therefore the less affluent, with most of them dependent, as will be explained, upon a regular process of endowment from the central Treasury. Municipalities on the other hand receive only such sums by ways of grants or other assistance as may be made available from time to time.

The powers of municipalities and shires are specific rather than general and of these powers, some concerned, broadly speaking, with the carrying on of primary local services, are obligatory, while others touching the higher development of the system are optional. In all, the activities of Local Government, whether compulsory or permissive, cover a fairly wide field of community service and enterprise, although not so extensive as in other countries. Moreover a number of those services such as transport, ports and utility undertakings, which elsewhere come within the scope of Local Government, are managed and controlled, in major instances in New South Wales, by statutory bodies specially constituted for the purpose. Roads, bridges and ferries, public markets, abattoirs, electricity and water supply, passenger motor bus services, health (subject to the general control of the State Department of Public Health), parks, playgrounds and other amenities, building regulation, cultural movements including free public libraries, housing, slum clearance and hospitalisation — all these and others will be found amongst the activities within the power of councils under the Local Government Act. A close supervision is exercised over municipalities and shires by the Government, acting through the Local Government Department, and this is especially so in matters of finance.

Sources of Local Finance. The extent to which activities of councils are carried on in individual instances beyond essential community services and the quality of services rendered by councils are dependent upon local spirit and initiative, whilst finance is a limiting factor throughout. Rates levied upon the unimproved capital value of land are perhaps the most characteristic source of local government revenue. It is obligatory upon councils to impose a rate of at least 1d. in the £ on the unimproved capital value, but they have the option of levying other rates on the improved capital value. Few councils, however, avail themselves of this option. The Local Government Act imposes a limit to councils' rating powers, except in cases approved by the Minister, and government, charitable and religious properties are exempt from rates. Apart from rates, revenues of councils consist of fees, usually of a minor character, and contributions by ratepayers to the cost of works, such as kerbing and footpaths, which might best be regarded as receipts-in-aid rather than revenue proper.

Councils may borrow in several forms—by limited overdrafts, by ordinary loans for prescribed purposes and by special loans for any work, service or object. As with rates, the Local Government Act imposes a limit to borrowing powers so that a council may not borrow beyond a fixed proportion of the unimproved capital value of land within its area. There is provision, however, for borrowings beyond the maximum in special cases. Because borrowings in the Local Government system are subject to a rigid plan of repayment, expenditures on development, apart from self-contained services, are conditioned by the load that can be carried by values of ratable lands.

Forms of State Assistance. Viewed in a narrow sense the gain to the State from Local Government may be measured by the volume of public expenditures saved to the general finances at the expense of the local ratepayer. It is not that the system brings about an entire devolution of responsibility for a distinct section of public services. A precise demarcation between the two systems is impracticable, and the tendency of the State is not so much to divest itself of functions in favour of Local Government as to set up arrangements for dual responsibility. Nor is the allocation of responsibility to councils rigid, for any road, bridge, ferry, public wharf or public work of whatever character within the ambit of Local Government may be proclaimed a national work, whereupon it reverts to the concern of the State. Again, there is a commonalty of interest in State and Local Government expenditures for often an outlay by the State has a special locality benefit, just as many of the activities of Local Government may be said to have a national value.

Grants and subsidies to councils do not necessarily follow a regular pattern, nor are they consistent in yearly amount. They are governed by varying needs, or by changes in policy, but altogether they are a recurring feature in the State's revenue budget. They may be designed to help in a passing emergency, such as flood relief, or to serve a more permanent end, for example, to compensate councils for loss of revenue due to the abolition of ferry tolls, since it has been public policy for many years not to charge tolls. Again subsidies may be part of a plan to stimulate local initiative, as evidenced by amounts voted each year for meeting portion of the interest on loans raised by councils for development works, by supplementation of councils' contributions to the Fire Brigades Board for maintenance of local fire fighting services, by assistance in the establishment of municipal library services and by financial aid in the erection and operation of meat works in country centres.

Portion of the proceeds of public borrowings is diverted to works under local government control. Here will be found expenditure on roads and bridges, drainage and stormwater channels, baths and other amenities, the embellishment of public reserves, water and sewerage works and extensions of electricity services into rural areas. Assistance from the public borrowings towards the capital cost of local works may be by way of grants, but in the past the Government more often has wholly financed the work, councils undertaking to repay some portion of the cost. This sharing of financial responsibility often has proceeded on arbitrary lines and frequently it has been decided in the ultimate by councils' default. However, legislation passed in 1935 set up a standard formula, whereby a council's liability for the cost of such a work is limited to an amount based on estimated earning power per head of population, and the Government assumes responsibility for the difference. One way or another a considerable portion of the cost of country town water supply and sewerage schemes has thus devolved upon the State, rather than upon the direct users of the schemes.

The Local Government Act enunciates a number of purposes for which the Government may, with Parliamentary appropriation, make advances to councils. Generally speaking, assistance to local government is recognised as an obligation of the central Treasury whenever the special needs or unusual circumstances of a locality demand it, and because of the importance of local works in the overall plan of national development. This assistance is not only a matter for the State. It may, in fact, be provided by the Commonwealth, in which case the State acts as an intermediary, receiving and distributing the money. Defence, housing, roads through sparsely populated areas and employment maintenance perhaps have been the most prominent type of works in this tripartite relationship.

That shires should be specially buttressed by the Treasury was recognised in the legislation which brought about the shire system, and also in successive Local Government enactments. When the shires were created they took over the upkeep of roads, bridges, ferries and other services which up to that time had been a charge on the general revenues. Because the local resources available to them fell considerably short of the financial responsibilities they thus assumed, equity and necessity alike entered into their claim upon the State. The principle of endowment is given effect in the Local Government Act, and a regular annual sum is voted from Consolidated Revenue for this service. The Act directs that endowment is to be distributed amongst participating councils in accordance with a triennial apportionment, and a

number of matters to be taken into consideration in making the apportionment are set out in the Act. These include the special needs of a shire; the difficulty or otherwise of constructing and maintaining roads therein; the amount which a council itself has spent in immediately preceding years on roads having more than a local value; the faithfulness of a council's land valuation practice; the relationship of the rate actually levied to the maximum rate and, not least of all, a council's capacity for self help, as well as efficiency in managing its own affairs. Only a comparatively small number of shires are self-contained to the extent that they do not participate in endowment.

Claims by Local Government on the General Tax Pool. The relationship between State and Local Government in the future is uncertain, and the relative development of the functions of the two orders of governmental organisation promises to remain a controversial aspect of Australian affairs. Local authorities plead the need for a broadening of their financial domain. They point to the disparity in revenue raising capacity amongst individual councils, with consequent inequality of services, and to the difficulty in financing even basic services from purely local revenues. It is contended that the growing demand for social and cultural amenities poses obligations beyond the capacity of these revenues and that if Local Government is to play its part in national development, a wider access to revenues, including a sharing in the pool of personal and corporate income taxes, is necessary.

The claim by Local Government has been stated:—[1]

"Whereas, prior to 1918, Local Government was mainly concerned with roads, footpaths, kerbing and guttering, and recreation, to-day more than ever, Local Government is called upon to deal with human values rather than purely material things. Important groups have grown up, emphasising the need for Baby Health Centres, Child Care and Rest Centres for women, Community Libraries, Youth Centres and Cultural Centres of all kinds. There is demand also for action by Councils in the field of increasing land productivity, the destruction of noxious weeds and adoption of soil erosion and flood preventive measures. Increased local amenities in the country cannot any longer be delayed by way of more community housing, water supply, sewerage, electricity and town planning, all most significant to the general health and happiness of the people. These activities have opened up a new vista, providing fresh opportunities whereby Local Government may play a greater part in adding to the sum of human happiness . . .

. . . Local Government is urging the appointment of a competent Committee of Enquiry to study the whole problem of Commonwealth, State and Local Government relationships and responsibilities and to

[1] *Local Government Finance* by A. Mainerd, Secretary, Local Government and Shires Associations of N.S.W., in the *Journal of the Australian Regional Groups of the Institute of Public Administration*, September-December, 1950.

devise ways and means of ensuring to Local Government from the common pool of taxation—to which all contribute according to their capacity—adequate resources for its tasks.

There is good reason also for support of a proposal . . . that there should be an Authority—somewhat akin to the Loan Council—representative of the Commonwealth, the States, Regional Authorities and Local Government—charged with the duty of appropriately and equitably allocating to all Governmental Authorities a share of the general revenues of the Commonwealth, consistent with their respective obligations and existing revenues".

Chapter X

CONSERVATION OF NATURAL RESOURCES

Co-ordination of Measures.

The Conservation Authority. In Australia, as in other countries, several generations passed before the public conscience was awakened to the growing menace to the welfare of the nation from the ruthless use and consequent exhaustion of its natural resources. For more than a hundred years, the richness of the newly settled territory was regarded as something to be exploited rather than conserved. The conservation movement has gathered pace only in the present century. Now in the forefront of public expenditures, it promises to reach a progressively greater prominence.

Under the Australian organisation of government the territorial wealth of the country forms part of the domain of the States and expenditures on its conservation devolve therefore upon State Governments. Realising the need for a co-ordinated approach to the conservation problem, New South Wales has established a separate Cabinet portfolio and a central administrative authority for this purpose. Subject to control by the authority in co-ordination matters there are three distinct conservation agencies, each functioning within the framework of its own governing statute and concerned with its own particular responsibility—one with forests, another with water and a third with soil.

With five members, all appointed by the Governor, the constitution of the Conservation Authority includes a representative of each of these agencies and also of the Department of Conservation, the latter being the Executive Member. Subject to the control and direction of the Minister in all respects the powers and functions of the Authority include:—

"The promotion, formulation and co-ordination of plans for the conservation and development of water and timber resources and the conservation of the soil and the co-ordination of works for such purposes;

the initiation and co-ordination of investigations and surveys for such purposes and the direction of the order, time and rate of undertaking such investigations and surveys;

the direction of the Water Conservation and Irrigation Commis-

sion, the Forestry Commission and the Soil Conservation Service in certain specified matters for the purpose of facilitating the efficient construction of works, the carrying out of schemes and measures for the conservation, development and provision of water supplies and timber resources and the conservation of the soil."[2]

Divisions of Conservation Activity. Forestry engages the attention of a specialist staff with State-wide ramifications. Forests are both a source of public revenue and a cause of public expenditure. In the former sense, the Government derives large sums as royalty on timber taken from lands owned by the State. About three-fourths of the commercially valuable trees in New South Wales grow on Crown lands. Timber sales by the Government, therefore, result in wastage to the public asset, and they represent a large proportion of the total economic loss through the progressive depletion of the forest wealth of the country. There is then a duty upon the Government, not only to conserve existing resources, but also to make good this overall loss by fostering immature forests and by developing new forest areas. This involves regular annual allocations for forestry research, sylvicultural nurseries, tree planting and thinning, construction of roads of access to forests and protection against fire. The outlay on these services constitutes an important branch of public expenditure known as afforestation and re-afforestation.

The Water Conservation and Irrigation Commission, a body corporate under the Irrigation Act, is the State's water conservtion authority. As its name implies, the Commission is concerned not only with the conservation of water resources, but also with the utilisation of these resources by means of irrigation projects. Water conservation and irrigation are cognate activities. By storage and other measures for regulating the flow of rivers which otherwise would run waste to the sea, a continuous supply of water may be assured to riparian owners. But in a country with extensive low rainfall areas, it is through the diversion of the water for the purpose of irrigating arid or semi-arid lands that conservation projects are turned to the best account.

Expenditures on soil conservation are the most recent amongst the several forms of outlay by the State on the conservation of natural resources. An erosion survey of New South Wales commenced in 1941 showed that much of the best agricultural land was affected by wind and water erosion. The survey indicated not merely the damage done, but also the potentially greater damage

[2] *Report of the Department of Conservation* year ended 30th June, 1949.

if the menace were allowed to remain unchecked. The problem confronting the State, therefore, was one of prevention as well as cure. It involved, in the first instance, the building up of a technical service, the development of restorative and preventative methods, and the stimulation of a spirit of self help in anti-erosion practices amongst the farming community. The departmental organisation through which the work is carried on operates under legislation first introduced in 1938.

FORESTS.

Forestry Organisation. In New South Wales forestry ventures do not attract private capital to any extent and afforestation is a duty which devolves upon the State. Such an obligation applies in varying degrees to governments generally, for the nature, importance and wide scope of forestry operations make them imperatively a matter of public concern. For one thing, afforestation is a hazardous, long-term venture which only the State could be expected to face on the scale required. Furthermore, governments are actuated in keeping forests in being by other considerations of public welfare, for example, the prevention of soil erosion which occurs when the land is denuded of trees, and the need to maintain the flow of streams originating in wooded areas. It is generally conceded that the State is best able to undertake and supervise the overall work of afforestation because of its ability and willingness to organise an expert personnel, to develop scientific study and to co-ordinate forestry practice on permanent lines.

Compared with other land masses of the globe, Australia is sparsely served with forests. In New South Wales approximately five-sixths of the indigenous trees are hardwoods of varied types; brush timbers grow in the warm coastal areas, and conifers, limited in species and quantity, are found in inland parts of the State. A scarcity of native varieties has been responsible for the direction of afforestation policy to the planting of softwoods in localities suitable for their growth. As in other countries, much of the more valuable timber has fallen before the axe of the settler. For almost one hundred years after the foundation of the Colony forestry conservation was subordinated to land settlement, and there was scarcely any afforestation policy. The revenues did not receive full benefit for the value of timber taken from the public domain, for by long-accepted usage, whoever felled a tree became the owner of the timber product. While the first approach to a systematic control over the timber lands and to the problem of maintaining forests in perpetuity commenced a short period before the close of the last century, forestry organisation did not

take any really settled form until 1916, when the present Forestry Act was passed.

Under this enactment, management of forestry is delegated to a Commissioner, with two Assistant Commissioners, all appointed by the Governor. The Forestry Commission is constituted a corporation sole and, although subject in all matters to the overriding control and direction of the Minister, it exercises a wide charter to undertake measures for the preservation, development and use of the State's forest domain. The Commission may sell timber at stump or after conversion into logs or hewn merchantable form, construct roads, railways or other works, and charter vessels for timber transport, carry on forestry research and experiment and depasture stock on forestry reserves. It is also vested with authority to undertake measures for the preservation of national flora, the safeguarding of timber cover on catchment areas and the prevention of erosion.

Except for the propagation of indigenous trees, the afforestation policy to be followed by the Forestry Commission is subject to the control of the Government. The Forestry Act directs that no scheme of afforestation with exotic species of timber is to be undertaken or extended without the written approval of the Minister, which approval is not to be given unless evidence is adduced to the satisfaction of the Minister that the soil, site and climate are likely to render the carrying out of the scheme desirable in the public interest.

For purposes of local administration the State is divided into a number of forestry districts, each controlled by a senior officer of the forestry service known as a District Forester. There are, in turn, sub-district units managed by forest officers under the general direction of the District Forester. In localities where timber resources are of minor value a like function is exercised by members of the police force. To co-ordinate the forestry organisation, as thus set up, with the central administration, forestry districts are merged into inspectorates, each supervised by an inspector, linked with and conversant with head office design and policy. The Forestry Act requires that there be not less than three such inspectorates.

In its functional organisation the Commission encompasses three divisions. One—the Division of Forest Management—is concerned with forest survey, sylviculture, forest classification, road construction and maintenance and fire control; a second division deals with general organisation, accounting and personnel; and a third with wood technology, the licensing of forest operations and matters relating to marketing of timber production.

Forestry Revenue and Expenditure. The primary objectives of forestry legislation are to develop and perpetuate the native timber industry and to ensure a full return to the public revenue for the value of timber taken from State-owned forests. The first of these objectives is expressed in the statutory provisions for the retention of public ownership by dedication as State Forests, or by reservation from sale of timber lands still held by the State. Privately owned land may also be purchased or resumed in order to be set aside as a State Forest. Any dedication of a State Forest may be revoked by resolution of both Houses of Parliament, whereupon the area reverts to its normal status and becomes available for sale or other disposition by the authority administering the Crown Lands Act. But to give greater surety for the permanent preservation of those areas that possess special capacity to regenerate and furnish substantial yields of timber, the Forestry Act provides that they may be declared National Forests; thereafter, dedication cannot be revoked except by Act of Parliament. When, on the other hand, lands are merely reserved from sale, they are designated Timber Reserves. Timber Reserves are notified as such by the Governor. They remain within the jurisdiction of the Forestry Commission for exploitation of their timber values and for investigation as to their suitability for reafforestation. The original intent of the legislation was that the reserves be of a temporary duration and the Governor may revoke any reservation, but giving effect to present-day considerations of soil conservation, erosion control and forest protection much of the lands thus set aside may be absorbed into the plan of permanent forest dedication.

Each State Forest is proclaimed under a distinctive name and number; its limits and topography are defined by survey and upon its timber and other values being ascertained, a plan of working and management is laid down by the Forestry Commission. Similarly, a plan of working is determined for a Timber Reserve. The Commission may authorise the removal of timber from a State Forest or Timber Reserve, permit the land to be used for prescribed purposes, and, provided there is no conflict with the interests of forestry, with the approval of the Minister lease any portion of a State Forest for grazing or other purposes. Nowadays, however, the latter provision of the law is not availed of, the policy of the Commission being to grant long-term occupation permits rather than leases over forestry areas.

Operations of timber getters extracting timber from Crown lands and of sawmillers throughout the State are supervised by the Forestry Commission by means of licenses issued at a nominal fee. Timber getters' licenses may be either special or general,

the former to have a term of not more than ten years and the latter not more than twelve months. Processes under either form of license are similar in many respects and each may be applied to any forestry locality. Special licenses are usually issued to authorise specialised operations within a concentrated area, such as a State Forest or a Timber Reserve, and they may confer an exclusive right upon the holder to take timber from the area defined in the license. They are almost universally the form of timber-getting authority availed of by private operators. The Commission's power to regulate operations of sawmillers by license applies to the milling of timber taken from private as well as public land.

Direct conversion practice, whereby the Forestry Commission undertakes the cutting, snigging and hauling of timber, is now extensively followed in New South Wales. The return to the Commission is based on the appraised value of logs at the mill site, and dues to the public revenue for royalty are accounted for by the Commission from the sale proceeds. Forestry operations have thus developed a trading character, since the Commission measures its ability to carry on direct conversion processes on profit and loss lines. So far as concerns operations by private timber-getters under license, the Forestry Act directs that a special license may be sold by auction or by tender. Theoretically the State may thus dispose of its timber to the highest bidder, but, in practice, the system of auction or tender is not followed. Royalty on commercial timbers, whether removed from State Forests, Timber Reserves or lands occupied by Crown tenants, is payable at rates fixed by the Commission but subject to minima laid down by regulation. Such rates are determined according to species and with due regard to forest accessibility, extraction difficulties, costs of transport to nearest market centre and other such operating expenses. The timber-getter is required to give a distinguishing number and mark to all logs felled by him, the timber, thus identified, being removed from the forest under the surveillance of forest officers. Upon the evidence of returns furnished to the Forestry Commission by timber-getters or by sawmillers, royalty is assessed and claimed.

Proceeds of royalty, supplemented by rents from grazing leases and permits and other receipts of the Forestry Commission, provide in part the funds for meeting forestry expenditures. Primarily, receipts from these sources are taken into the Consolidated Revenue Fund, but one-half is earmarked for respending. The Forestry Act directs that this proportion is to be withdrawn from the Consolidated Revenue Fund and deposited in a special account at the Treasury for expenditure on afforestation and

incidental works during the year in which it is so withdrawn or during the next succeeding year. In thus relating the outlay on forestry to the revenue from the timber domain and in providing for respending within a stipulated period, the Legislature aims at a balanced relationship between contemporary deforestation and reafforestation. In reality, this annual allotment is a minimum one. Not infrequently, it is supplemented by annual votes, and this has been especially so in periods of depression, since forestry is deemed to have a high priority as a means of absorbing unemployed on works of permanent value to the State. Furthermore, the practice in New South Wales is to provide by annual votes for administrative and other expenses of the Forestry Commission not incurred directly on afforestation or re-afforestation processes. Supplementing these provisions from its general revenues, the State, in recent years, has adopted the practice of making allocations from the Loan Fund for forestry works.

WATER.

Control of State Water Resources. Most of the one great river system of Australia is situated in New South Wales, but it extends also to Victoria, South Australia and Queensland. The Murrumbidgee, with its principal tributary the Lachlan, is wholly within New South Wales. The Darling flows from the northern to the southern borders of the State, but it is fed in part by streams which have their origin in Queensland. Some of the sources of the Murray, the largest Australian river, are in Victoria and some in New South Wales. Although it marks the boundary between these two States, the Murray legally is within the territory of New South Wales for the greater part of its course. Junctioning with the Darling near the south-western corner of the State, the Murray flows into South Australia and thence to the sea.

Australian rivers are less valuable as highways of commerce than for their aid to land settlement, particularly through the agency of storage and irrigation works. During earlier stages in the history of the country, river transport, notably along the Murray, was responsible for the opening up of land over wide areas, but with the development of irrigation diversion projects the importance of the rivers for navigation purposes has greatly declined. As highways of commerce the Federal Constitution makes the rivers subject to laws of the Commonwealth except that (Section 100) "The Commonwealth shall not by law or regulation of trade and commerce abridge the right of a State or of the residents therein to the reasonable use of the waters for conservation or irrigation."

The greater utility of the rivers for irrigation purposes makes them essentially matters of State concern. No little controversy has marked the allocation of these waters for irrigation or other developmental projects amongst the several riparian States. Thus more than half a century of dispute passed before the States agreed upon measures for the harnessing of the Murray and the diversion of its waters. In 1914 New South Wales, Victoria and South Australia undertook conjointly with the Commonwealth to constitute a River Murray Commission, and each Government enacted legislation to provide for the construction of works, the sharing of costs and the allocation of the river waters.

The River Murray Agreement is administered by the Commission, which consists of a representative of each State and the Commonwealth, the lastnamed presiding at all meetings. It is a responsibility of the Commission to arrange for the construction of works for conserving and regulating the river flow, but that body is not itself a construction authority. Such works are carried out by the several States, which are responsible also for maintenance. While capital costs are shared in agreed proportions by the Commonwealth and the States, expenditure on maintenance and operation falls wholly upon the States. A number of irrigation works set up by the three States are watered by the river and operating costs of these are met by the particular State to which the works belong.

The use of the Snowy River, now decided by Commonwealth action on a gigantic scale, for long provided another controversy between the States concerned. With its catchment in New South Wales and its flow to the sea through Victoria, the development of its hydro-electric potentialities was urged by the latter State, while New South Wales advocated diversion of the course of the river to the Murrumbidgee in order to augment irrigation waters derived from that stream. The Commonwealth scheme provides both for the generation of electricity from the flow of the river and the other Snowy Mountain streams and for the diversion of their waters to augment irrigation projects serving the two States.

New South Wales and Queensland have constituted a joint authority to regulate the use of waters in the several rivers flowing through their adjoining border country. Costs of storage and other construction works and their maintenance are met by the two Governments in terms of an agreement entered into between them.

The Murrumbidgee, drawn upon solely by New South Wales, is the source of the largest irrigation supply as yet established by that State. The waters of the Murrumbidgee are stored at Burrin-

juck Dam and utilised for a number of water supply and irrigation undertakings, of which the most important are grouped under the title of the Murrumbidgee Irrigation Areas. Various other water conservation and irrigation schemes have been established in the State or are in prospect. The demand for water is insistent and, to a greater degree than ever, the investment of public capital is now being turned to conservation and irrigation projects.

The Conservation and Irrigation Authority. The organisation and control of large scale water conservation and irrigation works is the principal activity of the Water Conservation and Irrigation Commission. Ancillary functions include the investigation of proposed schemes; river gauging; supervision of works constructed by the State but administered by local water trusts; control of artesian and shallow boring; licensing of privately-owned works for stock and domestic water supply, irrigation and other purposes; and the administration of land settlement on irrigation areas.

Subject in all respects to the control and direction of the Minister for Conservation the Commission, as a constructing authority, may carry out water conservation and irrigation projects irrespective of what the estimated cost might be. Necessarily this power is subject to funds being made available by Parliament. Administrative costs of the Commission are met by annual appropriations from the Consolidated Revenue Fund, allocations against the capital cost of works under construction and from operating revenue of undertakings within its control. The Commission is also an agency of the Government for the collection of receipts from the sale of water rights. An old law of riparian ownership that every proprietor of lands on the banks of a river has an equal right to use of the water does not prevail in New South Wales. The right to the use and flow and to the control of the water in rivers and lakes flowing through or past, or situate within, the land of two or more occupiers became vested first in the Crown by legislation enacted in 1896, and by later legislation, in the Commission. The rights of access of community water supply bodies to water resources are not restricted, however, by this law of public ownership.

Supervision and control of private individuals in the utilisation of water from rivers and lakes within the State and the protection of the interests of users *inter se* thus devolve upon the Commission. Conservation, irrigation, water supply, drainage and other such projects, except where of a minor nature, can be carried out only by authority of a license or permit issued by the Commission. Applications for licenses and permits, and their renewal, are

accompanied by a fee the proceeds of which are taken into the State's general revenues.

The right to the use of water in rivers and lakes so conferred by licenses and permits is to be distinguished from "water rights" as statutorily defined in connection with State-operated irrigation schemes. A water right, when attached to an irrigation holding, entitles the occupier to the supply of a specified quantity of water and carries with it an obligation to pay for that quantity, whether used or not. As explained later, receipts from water rights held by settlers in irrigation areas do not form part of the State's general revenues.

Water Conservation and Irrigation Finance. There are, broadly speaking, three types of irrigation and kindred projects carried out by the State, namely (1) Irrigation Areas, (2) Domestic and Stock Water Supply and Irrigation Districts and (3) Works for the diversion or storage of water to meet the needs of local bodies of settlers.

Irrigation Areas are associated with the State's closer settlement activities,[3] since they are an aggregation of small holdings, opened up as part of the irrigation project and developed on closer settlement principles. Domestic and Stock Water Supply and Irrigation Districts, while they present many features in common with Irrigation Areas, are designed to provide water for holdings already in existence and over a wide tract of country. Intended primarily to foster the stock-raising industry, water supply to districts may also be made available to irrigate portion of a holding, but then only for the growing of produce incidental to the raising of stock. Storage and diversion works carried out on behalf of local bodies of settlers are relatively of a minor nature. They are initiated by the settlers, who, after a work has been constructed and financed by the Government, form a trust for its management. The trust makes annual rating assessments upon the participating settlers, collects the rates and accounts to the Government for annual instalments of principal and interest in repayment of the capital cost.

Almost invariably, the capital cost of water conservation and irrigation works is financed from the public borrowings. Disposals of irrigation lands, either outright or by lease in perpetuity, provide a large proportion of the direct return to the State. In addition, the State receives revenue for the supply of water to settlers, firstly by way of a fixed annual rating entitling the settler to a prescribed water allowance and secondly from payments for the quantity of water used in excess of this allowance. Operating

[3] See Chapter XIX.

revenues and expenditures of Irrigation Areas and Stock and Domestic Water Supply and Irrigation Districts are combined in a circulating fund within the Treasury. All receipts from lease rentals, interest on instalment land purchases, water sales and miscellaneous revenue sources are taken into this fund, the moneys of which are available, without Parliamentary appropriation, to meet operating expenditures and interest on the capital investment. Interest on capital rests on a special footing. It is to be borne in mind that water conservation and irrigation schemes are costly ventures, requiring extensive settlement and a high production to make them self-supporting. Direct earnings usually are not sufficient to meet interest on construction outlay in addition to expenditure on running and maintenance, particularly during the developmental stages, and it is not the practice of the Legislature to impose a rigid obligation for the payment of interest. The result is that the charge largely is borne by the general revenues.

This is not to say that no allowance for interest is included in irrigation ratings and charges. For rating purposes, water conservation and irrigation undertakings are regarded partly in the nature of business ventures which should return direct revenues equal to all operating and capital expenses, and partly as national works chargeable to the general revenues. The division is purely arbitrary, but theoretically at least, the water user is expected to meet all costs incurred in the distribution of water, while expenditures incidental to the headworks are deemed to be national in character. In the final result, the allocation of cost between the water user and the general taxpayer is governed by circumstances and it may vary considerably from year to year. Fluctuations in seasonal conditions, for instance, have an important bearing upon annual revenue from water sales and, consequently, upon the capacity of the irrigation fund to meet capital debt charges.

In the early stages of large scale irrigation in the State the ventures were classified as industrial undertakings, which meant, in effect, that they were intended to be financially self-contained and to be subjected to the test of an annual Profit and Loss Account. Events have emphasised that it is not practicable to ascertain the loss or gain to the State from irrigation development simply by measuring direct revenues against expenditures. Gains are largely national in character, inasmuch as irrigation creates new settlement amidst lands which otherwise might remain unproductive; the settlements add to the community wealth and thus to the general revenues. It is in this way that the State may be compensated for the outlay incurred in the construction and maintenance of water conservation and irrigation works.

Soil.

Conservation of Land. Wastage of the soil by erosion is largely the result of deforestation, cultivation and over-grazing, often characteristic in one way or another of land utilisation. Primarily, erosion is a problem confronting the private landholder. But the Government is attracted to the problem because of its threat to the general welfare and because the measures necessary to counter it call for technical resources that only a government could be expected to muster. Moreover, the erosion menace to water conservation undertakings calls for public expenditures on the protection of catchment areas, particularly in those parts of the country where there is active or potential siltation of water storage reservoirs. Thus, the conservation of the soil is essentially a combination of public and private effort and spending.

Unlike forestry and water conservation, expenditures by the State on soil conservation do not result in any direct return to the public receipts. So far as concerns farm lands, the Government aims at stimulating the landholder's interest in the erosion danger, educating him in soil protection practice, encouraging him to undertake erosion prevention works and if needs be, in providing finance for the works. A plant pool has been built up, staff have been trained and research stations established at focal points throughout country areas. The stations carry out field demonstrations, instruct landholders, local authorities and other interested bodies, and supervise farm conservation projects. The State makes an appropriation from its general revenues each year for these purposes.

Funds for soil conservation advances to landholders are made available by the Government through the Rural Bank. An advance may be sought by a landholder or by two or more holders of adjoining lands, and work thus financed may be carried out privately or by the Government. Advances are subject to interest at rates determined by the Treasury. They are secured by deed of charge and are repayable by half-yearly instalments over a determined period, which, however, is not to exceed fifteen years.

Aside from its function of encouraging self help amongst the farming community the Conservation Authority may conduct experimental and research work and make surveys and investigations in connection with soil conservation and erosion mitigation. The Authority is required to submit schemes for the preservation of catchment areas and other types of lands subject to erosion hazard. Public departments and statutory corporations may join with the Authority in carrying out erosion prevention measures. Any landholder deeming himself prejudiced by erosion works may

object, and, failing compromise with the Minister, the right of appeal to the Land and Valuation Court is open to him. It is within the powers of the Minister, however, to require a landholder to make just and equitable contributions to the cost of work done on his land.

Soil conservation legislation, already State wide in scope, was amplified in 1950 to deal in a special way with problems of a regional character of long standing in the valley of the Hunter River. The Act constituted a Board of trustees representative of various sections of local interests, and empowered the trust to make recommendations to the Government in relation to measures for flood mitigation and for soil, water and timber conservation in the valley. Subject to prescribed safeguards, the trust possesses a number of powers of direction over landholders in the region, and it may participate in the cost of constructing and maintaining works declared by the Government to be of a conservation nature. It is vested with power to levy rates based on the unimproved capital value of valley lands that are ratable under the Local Government Act. Rates, however, are subject to a prescribed maximum. In addition to finance from this source the trust may receive repayable advances from the Treasury.

CHAPTER XI.

PUBLIC OFFICERS' RETIREMENT SYSTEMS

FINANCING PROBLEM.

Purpose of Retirement Systems. Compulsory retirement at a fixed age is a rule governing the employment of almost all officers in the service of the State of New South Wales. Judges retire at seventy years. In the police force, where unimpaired bodily fitness is a prime consideration, retirement at a comparatively early age is the rule. Members of the police force retire at sixty, but should the public interest render it expedient and if the officer consents, his services may be retained until he reaches sixty five years. The more sedentary occupations of the public service invite a longer tenure. Officers employed under the Public Service Act are compelled to retire at sixty-five although they may do so voluntarily at sixty. Retirement conditions amongst Crown corporations generally are similar.

It can scarcely be denied that the rule of compulsory retirement imposes a moral obligation upon the public employer to provide for the welfare of the employee after he has completed his service. This obligation is recognised in the legislation of governments throughout the world. The ensuing expenditure may be regarded in a sense as a social service, and as such it assumes a prominence in the public economy. In the modern view a pension paid to a retired public officer is not a gratuity but rather a payment for services, deferred in the interest of the recipient until he reaches his old age. When a public officers' retirement system is founded on an equitable basis between the government as employer, the employee, and the taxpayer, it is, from the employer's viewpoint, as much a business as a social proceeding. Such a system promotes the interest of the State as employer as well as that of the employee who enjoys its benefits. It makes for a more contented and efficient public service, and it enables the State to provide for continuous replacement of old servants by younger men, thus reducing the inefficiency hazard which would prevail were the State compelled, on humanitarian grounds, to prolong the service of the aged employee. Where benefits beyond the mere

pensioning of an employee when he reaches retiring age are included in a retirement scheme, the additional expenditures incurred by a government could be justified on largely similar grounds. Modern practice usually provides for the superannuation of the employee who is compelled as a result of physical or mental disability to retire earlier, and also for payment of survivorship pensions to widows of deceased employees or pensioners. Here again the State is actuated by a combination of the social and business motive.

The security and solvency of any system of superannuation with worthwhile benefits depend primarily upon the original approach to the problem of finding the large sums necessary to establish the superannuation fund on a solid basis, and thereafter upon the degree of goodwill manifested by the employing authority. Because of the contractual obligations entered into, the superannuation of public employees, once undertaken, is apt, unless managed on prudent lines from the outset, to become a very serious problem. In New South Wales the financing of retirement systems has been and remains an outstanding feature in budget management.

Types of Systems. A superannuation scheme might be based on the joint contributory plan whereby employers and employees share equally or otherwise in the cost; alternatively the cost might be borne wholly by the employer. Where the employer meets the full cost the result is likely to be a smaller pension for the employee. As a general rule, if pensions are to be adequate the joint contribution method is necessary, and most superannuation systems are founded on such an arrangement.

If the employer is liable for the whole or part of the cost, either of two courses might be followed in meeting this liability. Under one, contributions are provided during the service of the employee. Since these contributions are based upon actuarial predeterminations the method is known as the actuarial reserve plan. Under the second method the employer makes no contribution during the service of an employee, but he bears either a fixed proportion or the whole cost of pensions when they are paid. This might be described as the maturity method. Frequently neither the actuarial reserve nor the maturity plan is followed, and the system of superannuation deteriorates into what is known as the cash assessment and disbursement method. Under this method employer contributions are assessed according to the needs of each

year and used with employee contributions to pay current pensions. Usually the employer's payment is regulated by the amount necessary to meet pension disbursements over and above the yield from employee contributions and any other pension fund earnings. There may or may not be provision for reserves, but with the pure cash assessment and disbursement method there is no fund accumulation, the essential feature, from the angle of the employee, being that his contributions are used to provide benefits to current pensioners.

Applied to an employee upon his entry into service at an early age, the problem of his superannuation on the actuarial reserve plan is relatively a simple one. It is practicable for the employer to anticipate the cost by a programme of annual payments spread over the employee's service life and progressively increasing at rate for age, according to salary advancement, until the employee attains maximum pension rights, at which stage the amount of the payment is stabilized. The extent of this payment is a matter for actuarial determination, conditioned largely by the degree of benefits under the scheme. As a generalization it might be stated however, that a contribution equal to something like four per cent. per annum of salary together with a similar contribution by the employee will suffice, if accumulated at compound interest, to provide him with an allowance on retirement sufficient to ensure a degree of comfort commensurate with that enjoyed during the period of his public service. The cost of a retirement system limited, in the aggregation of all employees, to an amount equal to four per cent. of the annual salaries bill, could scarcely be viewed as a harsh burden upon a public budget.

But the real problem of a retirement system does not arise from the case of the employee who is taken into the system at an early age. It is essentially related to the initial application of the plan to a service already in being and composed of a large number of older persons. To provide anything like an adequate scale of pensions for these employees a greatly augmented rate of contribution would have to be faced. Furthermore, the inability, for the most part, of older employees to bear their full share of this additional cost renders it necessary for a government to make a further payment by way of subsidy over and above the pro rata contribution. Altogether the cost of providing, during the remainder of their service, for the superannuation of older employees, even at a reduced scale of benefits, would reach a very large amount in proportion to the annual salaries bill. It is true that the immediate burden could be eased by conversion of the total contributions into a long term instalment plan, or by the creation of a permanent debt to the superannuation trustees upon which interest would be paid by the government in perpetuity.

Either method must result in a serious impact upon the public budget.

This initial difficulty of providing for older employees is perhaps the principal reason why public employing authorities are often deterred from establishing a system on the actuarial reserve method and turn instead to the maturity method. The gain to a government is in the immediate avoidance of budgetary expense, as the pension outlay at the commencement is small and many years must elapse before it reaches any proportions. In time the nebulous nature of the gain becomes apparent. Because of the strain on the public revenues from the greatly expanded annual cost which eventually has to be borne, the employer outlook to the question of pensions is likely to be put to a severe test.

Under a stable system of government and where there is traditional recognition of the pension right as a just reward for long public service, the maturity method of superannuating public officers is extensively followed. It is widely held, however, that the soundest approach to the large scale retirement system is by means of the actuarial reserve plan. Apart from the aspects of security and independence, this plan relates the government's contribution to the period of an employee's service and thus results in an equitable distribution of the cost over each generation of taxpayers. It gives full scope to interest earnings which are a vital element in accumulating the sum necessary to meet pensions, whereas under the maturity method interest is not a factor, the whole cost of the government's contribution having to come from the public revenues.

Superannuation Practice in New South Wales.

Variety of Systems and Funds. The cost of pensions to ex-public officers occupies an important place in the budget of New South Wales. There are several retirement systems in operation throughout the wide range of the public services and these in their entirety exhibit all the methods of superannuation finance already described—the contributory, the non-contributory, the actuarial reserve, the maturity and the cash assessment or disbursement plan. Dealt with in detail their history would provide an interesting contribution to a study devoted to the theory and practice of superannuation finance but only a brief treatment is practicable within the scope of this book.

The retirement system for members of the judiciary is an example of the non-contributory method. A pension upon retirement is secured to judges by statutory right. The amount of this pension is regulated by length of service but it is not in any event

to exceed one half of the salary at the time of retirement. Every such pension is charged upon the Consolidated Revenue Fund. Pensions paid by virtue of an Imperial Statute to ex-officers of the local branch of the Royal Mint are also an example of the non-contributory method for the cost is met wholly from the general revenues. Judges' pensions and mint pensions do not present any difficulty in a budgetary sense because of the small number of pensioners and the relatively insignificant amount involved.

It is the public policy that the honesty and integrity of the police force should be secured by the promise of a substantial pension upon retirement. Conjoined with this is a long standing idea of a Police Reward Fund whereby certain of the public receipts derived from police activities are allocated in such a manner that they will accrue for the special benefit of the police. Amongst the oldest of these allocations are proceeds of police court fines rewarded to a police officer as the informer or prosecutor in actions against the general public, the yield from the disposal of goods remaining unclaimed in the possession of the police and fines imposed on members of the force for disciplinary breaches. Police rewards are wholly turned over to the payment of retiring allowances, the rewards having in fact been amalgamated since 1906 with the proceeds of officers' superannuation contributions in a single Treasury fund known as the Police Superannuation and Reward Fund.

A police officer contributes four per cent. of his annual salary to the Police Superannuation and Reward Fund in purchase of rights to a pension which varies in individual instances according to length of service but is not to exceed three-fourths of the salary on retirement. His contribution is kept up in retirement in the form of an abatement of three per cent. of pension. Receipts of the fund from contributions and police rewards fall far short of pension commitments and as the fund has no reserves it is necessary for the general revenues each year to make good the deficiency. Thus the police officers' retirement system is an instance of the cash assessment or disbursement method of superannuation finance.

The retirement system for officers of the railway services is another instance of this method. Employee contributions, at slightly more than one and one half per cent. of salary provide only a modicum towards each year's superannuation disbursements. Operating revenues of the railways and other transport services joined in the scheme are required to make good the deficiency. Employees' contributions and subsidy payments by the

transport authorities are taken into an account at the Treasury known as the Railway Services Superannuation Account. An employee contributor becomes entitled to a pension from the account when he reaches sixty years of age, or to a breakdown pension at an earlier age, but it is necessary in each case that he should have completed ten years' service. The amount of pension is based upon the average annual salary received by a contributor during his service. It is not, however, to exceed two-thirds of this average. Should a pensioner die within a prescribed period after entering upon retirement, his representatives may receive a sum which is equal to the difference between the total pension received by him and his contributions. A refund of contributions with interest may be made should death occur during service.

New South Wales was the first amongst Australian governments to provide a system of retiring benefits for the Legislature. An Act of 1946 provided for the institution of a Provident Fund to be contributed to by members of the Legislative Assembly, at the rate, as amended by later legislation, of £117 per annum, deducted from salary. After serving in any three Parliaments a member is entitled upon retirement to a pension of £7/10/- per week and after an aggregate period of fifteen years or more in Parliament the pension entitlement is £9 per week. A widow of a deceased pensioner or of a deceased member who would have been eligible for a pension had he lived is also entitled to a pension.

The Provident Fund is controlled by trustees appointed by order of the Assembly. Pension payments are subsidized from the Consolidated Revenue by method set out in the Act. For each Parliament the trustees are to establish a sectional account to incorporate pension transactions relating to persons who ceased to be members during the course of the Parliament or at its close. The sum of the contributions by the members concerned is to be credited to the sectional account, together with interest as determined by the Colonial Treasurer, and the account is to be debited with refunds of contributions and pensions paid to the ex-members named therein, as well as with a proportion of the cost of management of the Provident Fund. Any deficiency in a sectional account at 30th June, each year, as certified by the Auditor-General, is to be paid into the fund out of moneys provided by Parliament.

By virtue of these provisions the Provident Fund is drawn upon to meet pensions and refunds to an amount equal to contributions paid by ex-members, together with interest, while contributions by continuing members remain cumulative within the Fund.

Development of Public Service Superannuation Practice. A superannuation system for officers of the general Public Service was first introduced in 1864, abandoned after a few years and revived in 1884 when a Civil Service Superannuation Account was set up. Officers were obliged to contribute four per cent. of their salaries to this account in consideration of a pension payable upon retirement or breakdown, and graduated, according to length of service, from one-fourth to two-thirds of the average salary earned in the three years preceding retirement. The Superannuation Account, which was kept in the Treasury, was credited with interest at four per cent. per annum, and its income was supplemented, during the five years from its commencement, by an annual grant of £20,000 from the Consolidated Revenue Fund. Except for these grants and also for a slight abatement of pensions of the officers concerned, or alternatively, the payment of a capital sum into the account upon retirement, the scheme contained no provision for making good the leeway of income necessary to sustain the pension liability on behalf of older officers. At first the Superannuation Account exhibited all those outward signs of strength and buoyancy that are apt to create a delusion of simplicity and ease in the early stages of any superannuation venture. For some years its resources increased, but in 1903, having then reached an inevitable state of exhaustion, its responsibilities were taken over by the Government. By legislation of that year the Government freed itself of obligation for superannuation of its servants beyond the claims of those with whom it had already contracted. The revenues and pension liabilities of the Superannuation Account were absorbed into the Consolidated Revenue Fund. Officers were given the choice either of continuing their contributions or of withdrawing from the scheme upon the promise of a refund of contributions with interest at retirement. The larger number chose the latter alternative.

For the time being at least it seemed, apart from the continuing liability to those officers who elected to remain under the old scheme, that the burden of officers' superannuation had been removed from the public finances. In 1912, however, the subject was actively revived when a committee was set up to report generally upon superannuation proposals and to inform the Government particularly upon (a) the advisableness of providing a scheme for public servants not then covered by any pension scheme, (b) the practicability of consolidating the then existing police and railway superannuation systems into a single system embracing the whole of the public services, and (c) the practicability of including municipal and shire employees in any system to be adopted for the public service generally. That there should

be a combined system for all sections of the Government services was considered by the committee to be desirable. Recommendations to this end did not fructify, however, and the police and railway systems continued to operate singly along the lines upon which they had been established prior to the committee's deliberations.[4]

The introduction of a State Superannuation Fund for officers of the Public Service, together with certain of the business undertakings and other statutory bodies followed the committee's recommendations. In its actuarial foundation, the wide scope of its benefits and its well defined employer and employee relationship, the scheme based upon the committee's report gave every promise of a lasting solution of the problem of public officers' superannuation. That this early promise has not been wholly realised could be attributed to weight of financial difficulty, especially in relation to the responsibility assumed by the Government in providing on generous lines for older employees. The important place occupied by the State Superannuation Fund in the public finances warrants a special notice and the remaining part of this chapter is devoted to a description and history of the financial arrangements of the fund.

State Superannuation Fund.

Origin of the Fund. By far the largest public officers' pension organisation in New South Wales, the State Superannuation Fund consolidates retirement systems for the general public service, the Rural Bank, and various other statutory bodies. One set of legislation blankets these activities within a standard superannuation scheme. Other public bodies can be brought into it. The Superannuation Act provides that the Council of a shire or municipality, or any person, corporation or board may on application and with the approval of both Houses of Parliament have the act applied to them. It might be regarded as a tribute to the

[4] Nor were the committee's recommendations for the extension of its proposed superannuation scheme to Local Government carried into effect. At a later stage a superannuation system on self contained lines was adopted for Local Government services, officers of these services being obliged to contribute, jointly with shire and municipal councils, to an endowment life assurance system, whereby payment of a capital sum is secured to each contributor in the year in which he normally retires or to his personal representatives should he die at an earlier stage. Contributions and assurances are managed by a Local Government Superannuation Board which also manages a Provident Fund, set up, again on the joint contributory plan, for payment of a lump sum on retirement to those officers whose age or other disabilities debar them from participating in the assurance premium arrangement. The Local Government officers' superannuation scheme does not touch the finances of the State government.

actuarial structure of the retirement system set up by the original Superannuation Act that the door should thus have been left open for the entry of any number of additional services into it.

The State Superannuation Fund commenced in 1919. Contributions by employers and employees are paid into the fund, which is charged with the costs of benefits under the Superannuation Act. The fund is controlled by an independent board of three members, of whom one must be an actuary. This board is responsible for the collection of contributions, the custody and investment of superannuation moneys and the payment of pensions. The Superannuation Fund is altogether detached from the central government finances, but uninvested moneys may be lodged at the board's discretion on call or fixed deposit with the Treasury, and the Treasurer may make loans to the board on the security of its investments in government loans. Management costs of the Superannuation scheme are met from the fund.

In addition to normal retirement, benefits from the fund cover the hazards of breakdown and death. A male contributor with ten years' service becomes entitled to a full pension upon retirement at age sixty, and a female at age fifty-five or sixty, according to the table under which she elected to contribute. Furthermore, a male contributor of ten years' standing may elect to retire upon or after reaching the age of fifty-five years, whereupon a pension, reduced in accordance with the precise age at which he retires may be paid to him. Should a contributor be compelled to retire on grounds of physical or mental incapacity not attributable to any fault of his own, he becomes entitled to the full pension for which he is contributing; where the incapacity is due to his own fault he is to receive such a pension as is determined by the Board to be the equivalent of his contribution rights in the fund. If a contributor or a pensioner dies, his widow is to receive one-half the pension for which he contributed, together with twenty-six pounds per annum for each child of the contributor or pensioner under the age of sixteen years. Orphan benefits may be paid, and the Act also contains provisions for refund of contributions in the event of the resignation or dismissal of a contributor, or the death of a widower, or divorced male contributor before reaching retiring age.

Originally based on pound for pound contributions by employers and employees the contribution liability was changed in 1948 to 60 per cent. employers and 40 per cent. employees and in 1952 to $63^1/_3$ per cent. and $36^2/_3$ per cent. These changes accompanied an extension in pension benefits whereby the Government, recognising the effect of the depreciated purchasing power of

money on the pension scale, undertook first to bear the cost of increasing all existing and future pensions by 25 per cent and later to share with employees the burden of a further addition of twenty per cent. In both cases the increase in unit values is to be met, so far as concerns employers, when pensions are paid.

The characteristic, common among many retirement systems, of a pension directly proportional to an employee's length of service and to his salary either at the date of retirement or averaged over the whole of his service, does not exist in the State's scheme. Benefits are graduated by a scale of pension units, each valued at £39/-/- per annum. In all, there are twenty-six units in the scale, amounting to a maximum pension right of £1,014 per annum.

Contributions by public officers are compulsory, except that the Superannuation Act does not apply to wages employees or to salaried officers in receipt of other than annual or monthly rates. New entrants beyond the age of forty may, with the approval of the Superannuation Board, participate for a lesser number of units than that applicable to their salary status, or they may be granted entire exemption. Normally an employee upon entry into service commences to contribute for the number of units assigned to his salary rate. Should he so desire he may contribute for an additional unit. Anticipating his salary progression, he may also elect to contribute in advance for one or two reserve units. The rate of contribution for each unit is based upon the age at which the employee commences to contribute for it, upon sex, and, in the case of a woman, whether she elects to retire at fifty-five or at sixty. Salary rates are divided into twenty-five groups, the lowest with a pension entitlement of two units or £78 per annum, the highest with twenty-six units or £1,014 per annum. As an employee progresses from one group to another, so also the number of pension units for which he is obliged to contribute increases. Should he reach a salary of £1,665 per annum he will then have acquired the maximum twenty-six units of pension rights, whereupon his contributions are stabilised. At age sixty he ceases to contribute even though his services may be retained, under the machinery of the Public Service Act, until he attains sixty-five years.

Employer contributions on behalf of Crown employees are met from the Consolidated Revenue Fund. Other employer contributions are met from the funds of the undertakings concerned.

The plan of contributions by employees laid down in the Superannuation Act, supplemented by employer payments, is

calculated to provide for all benefits as they emerge, including the contingencies of breakdown and death. The Superannuation Fund is founded on an assumed earning power of $3\frac{1}{2}$ per cent. and, should earnings in any year fall below this rate, the Government and other employer contributors are obliged to make good the difference. By statutory prescription the position of the fund is investigated each five years by actuaries who are obliged to state whether any increase or reduction in rates of contributions is desirable. Necessarily a number of variations, favourable and adverse, have entered into the actuarial structure of the fund since its commencement, but as yet no change has been introduced in basic rates of employee contributions.

Changes in Financial Structure. It was of the essence of the superannuation scheme when first introduced, that the fund's ability to provide for benefits as they emerged should be assured by payment of contributions both by employee and employer normally at pound for pound, during each employee's service. At the outset the Government as the largest single contributor to the fund was confronted with the burden of cost imposed by the scheme in the case of the older employee. Employees who were near retiring age at the time were dealt with specially. They were not required to make any contribution. The Superannuation Act gave them a small pension, financed wholly from Consolidated Revenue. Other employees over thirty years of age were allowed the choice, either to contribute for full pensions at rates appropriate to their age or to contribute for a limited number of pension units at the rates prescribed for age thirty. In the latter election, the Government was required not only to meet the normal pound for pound employer's contribution but also to make good the difference between the rate payable by the employee as at age thirty and the rate applicable to his actual age.

The over age thirty concessional liability devolving upon the Government in the first year proved to be a sum approaching one million pounds. Successive years saw a diminution in the annual charge as older employees reached retiring age. It was never contemplated, however, that this initial cost should be met year by year as it accrued, but rather that arrangements should be made for its conversion into a deferred instalment plan. Actually some portion of over age thirty contribution was paid in the early years of the scheme but at a later stage an agreement was entered into between the Government and the Superannuation Board whereby the former undertook to liquidate the then existing arrears and all future over age thirty charges by an equated sum consisting of principal and interest during a period of thirty-four years.

It seems certain that the burden thus assumed by the Government in making pensionable the past service of the older employees was the fundamental cause of a changed outlook later developed in the public budget to the superannuation scheme. In 1930 the arrangement for liquidation of the over age thirty liability was abandoned as part of a radical alteration in the system of superannuation finance whereby the Government ceased to contribute under the original reserve plan, but undertook instead to meet a proportion of the pensions paid from the fund. Because it was in the general revenues that the weight of contributions had been felt the most, this alteration was made to apply only to contributions from that source, that is to say, where the employer was the Crown. Statutory bodies whose contributions came from their own funds were not affected. They continued to discharge their obligation on the actuarial reserve plan.

The legislation which brought about the changed method of Crown contributions did not lay down any means for disposal of the large credit built up in favour of the Government by virtue of contributions already made to the fund under the discarded reserve plan. It was left for further legislation in 1933 to deal with this credit. The amending act of that year made the change to the maturity method retroactive to the commencement of the Superannuation Fund. The Act directed that the Government's excess contribution be refunded to the Treasury. The amount of this excess was calculated to be £3,832,000 and in order to minimise the disturbance to the fund by the withdrawal of such a considerable part of its resources the Act provided that repayment should be effected by annual instalments of £328,728, made up of principal and interest, over fifteen years.

This arrangement provided a novel interlude in the course of superannuation finance. On the one hand the public budget received the benefit of the refund; on the other hand it was required to meet portion of the pensions. For a number of years the effect of the receipt measured against the payment was largely compensatory and the cost of the superannuation scheme was little or nothing to the budget.

The arrangement lasted in its entirety until 1944. The refund period was then nearing its close and although the point of peak acceleration had been far from reached, the annual pension bill was steadily mounting. Altogether the potential burden of superannuation, heightened by the approaching loss to the revenues from the termination of the refund, loomed as a serious budget problem. Several courses suggested themselves by which the burden might be spread more evenly over immediate and future budgets—

(1) a return to the old contribution basis, (2) a tapering off of the refund over a prolonged period by means of progressive annual reductions in instalments and (3) the setting aside of special sums from current revenues in order to provide a reserve from which the Government could draw in future years against its pension liability. It is perhaps typical of the history of superannuation finance that an improvement in the general financial position of the State should have prompted consideration along these lines. The departure from the reserve method in 1930 with its later provision for the repayment of past government contributions could be associated with a period of budgetary difficulty, and the partial reversion to this method which occurred in 1944 might be linked with the improvement in the general State finances.

The Amending Act of 1944 ruled off, as it were, the past. It provided for the resumption of the old method of contributions on behalf of new entrants as well as for further units of pensions taken up by existing employees, thus restoring the Superannuation Fund to its original basis, at least in relation to all future obligations to be assumed by the Government. The effect of the lost contribution years was too great to permit of a complete reversion. Here, however, the legislation aimed at a middle course. So far as concerned existing pensioners and existing entitlements of contributors, the pension payment method was allowed to remain unchanged and the refund to the Treasury, except for an extension of the residue period, was not disturbed. On the other hand the Act provided for a series of supplementary payments from Consolidated Revenue into the Superannuation Fund. These payments are not to be less than £80,000 each year and they are to be continued until an amount of £3,832,000 shall have been paid into the fund. Any accumulation within the fund from the special payment, together with interest earned by its investment, may be applied against the Government's liability for pensions in such manner and to such an extent as may be agreed upon between the Superannuation Board and the Treasurer.

It will be observed that the amount of £3,832,000 to be restored to the fund over a number of future years is the same as that directed to be taken out under earlier legislation. Beyond this fact the sum has no particular significance, and in an actuarial sense it is a meaningless fixation. But should the special payments reach this amount, or any substantial part of it, there will then be available a useful reserve against which the heavy liability of the Government for pensions might be cushioned in the years ahead. The Amending Act of 1944 initiated a long range plan designed to tide the Government over the period until the effect of the reversion to the reserve method for new entrants comes into full play, and,

thus, in the course of time it may help to resolve the very difficult problem of superannuation finance.

At the close of the financial year 1951-52 the State Superannuation Fund assets were nearly £32 million, made up of investments in securities of the Commonwealth and Local Government bodies and a smaller but growing proportion in shares of public companies. Annual income greatly exceeded expenditure and a large amount was being added to net funds from each year's operations. Many years have yet to pass before the fund reaches its peak pension load, at which stage a condition of stabilization between income and expenditure is to be expected.

CHAPTER XII

PUBLIC DEBT

ORIGIN AND DEVELOPMENT OF STATE BORROWINGS

Nature of State Debt. More than a quarter of a century passed after the inauguration of the Commonwealth before Australian federalism came to have any great impact on the debt system of the States. For the most part the several governments continued to raise their own loans and manage their debts in much the same way as in the pre-federation period. In 1927, however, the States surrendered their independent borrowing powers to the joint Federal and State authority formed in the Australian Loan Council, and in terms of the agreement whereby the Council was created, the Commonwealth took over the liability for outstanding State loans. Since then borrowings on behalf of all the Governments have been conducted through the Loan Council by the Commonwealth which is directly answerable to the lender for interest and redemption, with recourse to the States for their individual shares. At the close of the financial year 1951-52 the total outstanding securities of the Commonwealth were £3,264 million of which £1,868 million had been issued for Federal purposes while £1,396 million related to the States.

The Commonwealth and State sections of the now federally controlled national debt provide in themselves a guide to the two distinct functional purposes to which Australian government borrowings have been directed. The Federal portion is largely the outcome of two world wars. It is true that the Commonwealth is a large scale spender on capital works and services but the traditional Federal policy in peace time is one of financial consolidation involving the use of the revenue fund for long term utilities, including those of an income producing nature. Perhaps the high level mark of this policy was reached in the three financial years 1949-50 to 1951-52 during which capital works financed from revenue reached a total of £257 million. State debt on the other hand is essentially a capital works and services debt, related largely to developmental functions and to various forms of utility and

public business enterprise. As the day to day costs of State government leave little or no marginal revenues for current financing of capital works, borrowings are an inevitable feature of State financial policy.

For the financial year 1951-52 loans raised by the Commonwealth on behalf of New South Wales added £64 million to that State's public debt. In the three year period 1949-50 to 1951-52 a total of £133 million was expended from the loan fund of the State. Functional analysis of this amount will serve to indicate the nature of the services customarily financed by New South Wales from borrowings[5]:—

	1949-50 £000	1950-51 £000	1951-52 £000
Transport—			
Railways, Tramways, Omnibuses and Ferries	11,666	17,195	23,910
Highways, Roads and Bridges	28	221	290
Port of Sydney	291	390	515
Outports, Harbours and Rivers	460	536	866
Electricity	590	5,099	15,002
Trading and Service Undertakings	787	1,300	1,573
Conservation of Water, Soil and Forests ..	3,653	4,292	4,998
Land Settlement	4,443	4,646	4,380
Water, Sewerage and Drainage Works	319	450	817
Local Government Works Generally	200	339	332
Housing (exclusive of expenditure under the Commonwealth-State Housing Agreement)	1,290	1,396	4,143
Rural and Agricultural Institutions and Services	156	340	641
Hospitals	1,624	2,148	2,991
Schools, Technical Colleges and Universities ..	1,383	2,525	4,330
Administrative and Social Service Institutions	329	291	566
	27,219	41,168	65,354

It will be observed of the expenditures that they are for most part of a directly reproductive character, embracing transport undertakings, public utilities and other forms of business investment designed to provide earnings sufficient to meet interest and to repay capital. A second part might be described as indirectly productive since it encompasses irrigation projects, outports, highways, afforestation, soil conservation, land settlement and such works for which the State rests upon the general developmental capacity, rather than upon direct returns, in justification of the charge against the loan fund. There is to be noted finally a third category consisting of a collection of expenditures on

[5] *Report of the Auditor General of New South Wales* 1951-52 (page 65).

schools, hospitals and institutions linked with a variety of governmental and social welfare functions which devolve upon the State.

Over the years policy in New South Wales has not been rigid in relation to the financing of non-income producing utilities of long term value. Contemporary conditions more or less have been the governing factor. Whenever circumstances permitted, the revenue fund has been drawn upon side by side with the loan fund, and as a consequence the governmental portion of the State's asset structure as it exists today is the outcome of a combination of loan and revenue spending. In earlier years practice on the whole showed some leaning to the conservative view that a government's borrowings should be confined to reproductive works. Nowadays, however, financing policy is conditioned by the urgency of requirements and by the theory that the quality of public expenditures is to be assessed according to the long term benefits which the expenditures yield as well as by income producing results. There is in consequence a well established trend to the loan fund for financing schools, hospitals and other institutions of a non-income earning type.

Aside from the three broad categories of capital works usually financed by New South Wales from borrowings as referred to above there is to be noticed expenditures of a national emergency character which came to the fore during the period of depression preceding World War II. The Commonwealth had not at that stage assumed its present day responsibility for social welfare and the burden of depression finance fell largely upon the States. In New South Wales works for unemployment relief were initiated from the loan fund. It was a feature of the works that they were of an improvised nature calculated to give employment speedily to the greatest number, the usefulness of the projects being secondary to the cardinal motive of stimulating business activity. Hence the expenditures were largely of a non-productive type. So also the State drew extensively upon borrowings to make good deficiencies in its revenue budget during the period. The borrowings were first covered by short term Treasury Bills but were subsequently converted to longer dated securities, the funding operations thus carried out being by far the most outstanding instance of the charging of revenue deficiencies to the permanent debt in the history of the State.

In addition to amounts directly owing through the Commonwealth there exists another large body of public loans which might be regarded as within the category of State debt. This consists of borrowings by public business and other undertakings detached

from the central Treasury, and permitted under their statutory charter to raise their own loans. A great deal of the developmental responsibility which otherwise would be the concern of the State devolves upon these authorities. The direct indebtedness of the State is therefore so much the less, but, on the other hand, repayment of the loans raised by semi-governmental bodies is guaranteed by the Government. Borrowing programmes of the undertakings are constantly expanding and the contingent liability of the State under guarantees is increasing correspondingly. At the close of the financial year 1951-52 the amount of this liability was £80 million.

Borrowings from 1842 to 1927. The Financial Agreement arrived at by the Commonwealth and States in 1927 so greatly transformed debt practice amongst the Australian Governments that a treatment of the pre-agreement period is now more of historical interest than a guide to the present day borrowing system. For more than half a century after its foundation New South Wales was content to contain its expenditure at the income level. Population, the Colony's primary need, provided eventually the first incentive to a borrowing policy. It has already been explained that proceeds from sales of the Crown Lands were set aside in the early colonial days for expenditure on immigration.[6] Eventually, however, resources of the Land Fund proved insufficient for this purpose and it became necessary to supplement the fund by borrowing. An immigration loan raised in 1842 was followed by a series of such loans, each secured on the fund receipts. These loans were nearly all repaid from revenue.

New South Wales had not then attained self-government, and the immigration loans were issued by the Governor's authority. However, a loan raised in 1852 to finance railway works undertaken by a private company was authorised by enactment of the Legislative Council of the day, as also were several later issues for water and sewerage utilities controlled by City of Sydney Commissioners. The first loan Act for general expenditure purposes was passed by the Legislative Council in 1854. Described as an "Act to authorise the immediate execution of certain public works of a permanent character by means of loans secured on the general revenues of the Colony", this measure empowered the Governor to borrow for a variety of projects, amongst which were water police buildings, watch houses, court houses, wharves, bridges and defence establishments.

Meanwhile, the first railways in New South Wales were under construction by two companies incorporated to operate and

[6] See page 84.

maintain the railways. The companies had not been able to raise capital necessary for fully carrying out the works, and altogether their activities had not proceeded to the satisfaction of the Colony. An Act passed in 1854 referred to the financial difficulties besetting the companies. It directed that, because of these and other circumstances, railways then under construction, and, moreover, all other railways throughout the Colony, should be constructed and carried on under public control. The Governor was empowered to raise by loans such sums as were, from time to time, appropriated by votes of the Legislative Council for railway works. Capital investment in the railways, for many years the outstanding item in the public borrowing schedule, was thus commenced. The first railway loan marked the beginnings of a permanent public debt.

While the forty years from 1842 were responsible for only a slow rate of increase in borrowings the purposes of loan spendings expanded steadily, and as immigration came to have a lesser place in the schedule, railway extensions, telegraphic communications, roads, wharves, bridges, improvements to harbours and rivers and works of a reproductive or developmental character appeared. The slow borrowing tempo of this period was succeeded by an energetic works policy, particularly by way of transport extensions and public utilities, which prevailed from 1882 to 1892. Accelerated by the urge for government spending in keeping with rising business conditions of the period the debt increased by more than double the total reached in the preceding forty years.

As a result of the set back to the public credit and the straitened national economy that followed the banking crisis of 1893 borrowings went into the doldrums. The London money market, which had supplied most of the loans since 1854, tightened and borrowings were confined to Australia. The lesson of the depression period left its mark on debt policy for a number of succeeding years. Recovery was steady and developmental works were maintained at an even rate. On the coming of federation in 1901, expenditure on post offices, customs and defence establishments disappeared from the State accounts. Further changes followed the extension of local government in 1905, when financial responsibility for local roads and ferries passed to local authorities.

In 1906, the Legislature, seeing in the then prosperous state of the revenues an opportunity to recast the principles upon which expenditures had hitherto been allocated between revenue and loans, introduced a Public Works Fund as a means of relieving the Loan Fund of the cost of works of a permanent but non-income producing character. One other objective of this move was to

secure the re-spending for capital purposes of at least some portion of receipts from disposals of the public estate. The new legislation provided accordingly for payment of a fixed portion of proceeds from Crown lands sales into the fund each year, as well as any sums appropriated from time to time out of Consolidated Revenue. Expenditure objects were limited to durable but non-income producing utilities. The Public Works Fund lasted twenty-two years, and, although much of its usefulness progressively disappeared with a gradual decline in land sales, the fund during its term provided finance for a number of non-productive works which otherwise might have been charged to the General Loan Account. Its termination reflected a change in the outlook to capital and revenue in State finance. According to later belief, there was no place in public finance for an intermediate fund since, in the final analysis, the source of all public receipts is either loans or income, and all spendings are capital or maintenance, to be charged to one or other of these two clear cut headings of receipts.

The Public Works Fund innovation did not bring about any reduction in loan expenditure. On the contrary, the borrowing tempo quickened, the debt increasing from £65 million at the beginning of the century to £245 million by 1928. A new phase of capital development was ushered in, marked, not only by rapid increase in the rate of government loan spendings, but also by change in the types of expenditures. The old public works' era had gone. Although many of the services to which this term had commonly been applied still appeared in the borrowing schedule, extensions of public utilities, capital equipment of government owned business enterprises, transport modernisation, projects fostering primary and secondary industries, irrigation undertakings and various other works of higher national development predominated.

Early Debt Practice. During the period from the commencement of responsible government to the handing over of State borrowing powers to the Australian Loan Council, legislative sanction to a public loan was conferred in a Loan Act. In itself, a Loan Act was both an authority to the Executive to borrow up to an amount named in the Act and to spend an equivalent amount on works and services which it specified. Loan raisings and spendings under a particular Loan Act were not correlated, each being merged in the income and outgo of the General Loan Account, which by Audit Act prescription, could be appropriated for any duly authorised loan service. Subject to a maximum interest rate, determination of the terms and conditions of a loan was left to the Executive, in whom rested also a standing

authority to convert or renew a loan at maturity. Pending receipt of proceeds from conversion or renewal issues, the Executive could repay a matured loan from the General Loan Account or from the proceeds of Treasury Bills specially raised for that purpose.

For many years in early debt history, debentures, varied only by Treasury Bills, were the standard security for public loans. Essentially an instrument of short term finance, Treasury Bills were resorted to, only to meet temporary needs, and they became the component of the floating debt, distinct from the permanent debt of the Colony. Usually, Treasury Bills were issued to make good a passing shortage of revenue, to extinguish a continuing deficit, or to provide for capital services in anticipation of a long term loan.

A Funded Stock Act of 1873 marked a partial change from debentures to a registered stock system. Modelled on "Consols", prominent in English debt practice, securities under the first Stock Act carried no fixed repayment liability. This early idea of a stock in perpetuity did not have a permanent vogue, however, and the loans issued under the Act of 1873 have, in fact, long since lost their identity in the course of debt conversions. Although the term "funded" stock was applied to securities issued under several subsequent enactments, these securities were subject to fixed maturities, and except in name they did not differ from "inscribed" stock, the term generally applied to most stock issued by the State. At a later stage, inscribed stock, bonds and debentures became the main components of State debt, local and overseas. Loans raised in New York were covered by issue of bonds.

In the train of the first stock Act, there came the New South Wales Stock Office, an institution for recording ownership of stock, which was to remain until the changes in public debt management brought about by the Financial Agreement. An Inscribed Stock Act passed in 1873 conferred a general power on the Executive, whenever authorised to raise a public loan, to do so by the issue of inscribed stock. It also permitted the conversion of existing debentures into stock and enabled the Executive to enter into an agreement with any bank in London, empowering the bank to conduct a register in that centre, to convert debentures into stock, and generally to undertake the management of London loans. As in the case of local issues, loans raised in London remained subject to this arrangement until State debts were taken over by the Commonwealth. Loans raised in New York were managed by the State's fiscal agents in that centre.

Formation of the Australian Loan Council. From 1854, when the first loan was raised by New South Wales abroad, until

1893, the year of the Australian banking crisis, the greater part of the Colony's borrowings was effected in London. The local market developed slowly and only a small portion of loan requirements was met in Australia. With the advent of the depression of 1893, the decline in Australian credit in London made it disadvantageous to float loans in that centre and, as already stated, New South Wales had to rely for a time on local resources. Although overseas borrowing was restored in succeeding years, the approach to the local market had revealed some ability on its part to support government loans, and the market thus established assumed a growing importance as an auxiliary to London. Loans were then negotiated by New South Wales, in common with other Australian governments, both at home and abroad.

Each State acted independently. So long as borrowings could be effected in London, the practice had no great bearing on the terms and conditions confronting the States. They were scarcely prejudiced by competition amongst themselves, as the terms under which loans could be raised in London were far from shaped wholly by borrowing operations of the several Australian Governments, but rather by the many factors associated with the widespread ramifications of London as the world's financial centre.

Changed conditions which later were to culminate in the co-ordination of all governmental borrowings through the Australian Loan Council can be traced to the first World War. The initial stage in the evolution towards a single borrowing authority is apparent when the Commonwealth, then an active borrower for war purposes, in the year 1915 induced the States, with the exception of New South Wales, to allow the Commonwealth to raise all London loans on their behalf. This arrangement lasted until 1919, when the States reverted to the practice of negotiating their own loans.

The years following the war witnessed a steady expansion of borrowings within Australia. With a decline in the London market, brought about by heavy demands for funds by the home and foreign governments during the war and for renewals in the after-war period, the greater incidence of borrowings tended to shift from London to Australia. But the local market could not keep pace with public works programmes. Interest rates hardened as the States reached beyond their borders in the quest for loan funds and the element of competition was introduced. Moreover, the mounting State debt structures and the absence generally of effective debt repayment measures presented a serious menace to the national economy. Under such conditions, the formation of an Australian Loan Council was proposed for the purpose of

co-ordinating borrowings and eliminating competition.[7] The initial meeting of the Council was held in 1924. A majority of States first joined on a basis of voluntary co-operation, but in 1927 the Commonwealth and States agreed to give the Council legal force. An agreement signed by representatives of the several governments in that year was sanctioned by the New South Wales Parliament by the Financial Agreement Ratification Act, 1928.

When first enacted, the Federal Constitution contained a provision that the Commonwealth Parliament may take over State debts. But alternative measures for adjusting the financial relationship of the Commonwealth and States were adopted after federation and the provision was never given effect.[8] The widened national debt organisation envisaged by the sponsors of the Financial Agreement called for an amendment to the Federal Constitution, requiring the consent of the Australian people. This was granted and, in due course, there was written into the Constitution a new provision by which the Commonwealth may make agreements with the States with respect to the public debt of the States, including (a) the taking over of such debts by the Commonwealth; (b) their management; (c) the payment of interest and the provision and management of sinking funds; (d) debt consolidation, renewal, conversion and redemption; (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and (f) the borrowing of money by the States or by the Commonwealth or by the Commonwealth for the States. The momentous change in Commonwealth and State financial relationships thus visualised, whereby the States were to surrender their sovereign borrowing powers to the co-ordinate authority of the Loan Council, was consummated when the several governments sanctioned the Financial Agreement. An era in Australian debt practice then ended and a new and entirely different one commenced.

The Financial Agreement

Borrowings by the Commonwealth on Behalf of the States. The Financial Agreement invokes the prestige and power of the Commonwealth as an added inducement to investors to lend for State purposes. Subject to decision of the Loan Council, new borrowings are now arranged by the Commonwealth on behalf of the States, as are conversions, renewals and redemptions; and all securities for loans are securities of the Commonwealth, pledged,

---

[7] As early as 1908, the Commonwealth had put forward a proposal for the institution of a Council of Finance to control the order and proportions of State borrowings.

[8] See Chapter VIII.

so far as the lender is concerned, on the resources of the Federal Government. Liability for State debts outstanding at 30th June, 1927, was taken over by the Commonwealth.[9] In a legal sense, one important consequence of this concentration of the borrowing authority and liability in the hands of the Commonwealth is to be observed. A State public debt as the term is commonly understood no longer exists. There is rather an obligation to pay to the Commonwealth interest on debt incurred on the State's behalf, to contribute to a sinking fund for repayment of this debt, and to meet in due proportion expenses of flotation, management and other incidental debt costs. For all practical purposes of nomenclature, the term "Loan Liability to the Commonwealth" is now adopted to indicate what had been known previously in the State system as the "Public Debt."[10]

While the Loan Council consists of the Prime Minister of the Commonwealth and the Premier of each State, the influence of the Commonwealth upon its deliberations is individually the strongest, inasmuch as the Commonwealth representative may exercise two votes as well as a casting vote. Borrowing ambitions of the States are subservient to Loan Council policy, for a State can borrow only in accordance with rules laid down in the Financial Agreement, and, in any matter upon which it is empowered to decide, a decision of the Council—the executive instrumentality under the Agreement—is final and binding upon the parties. A State, with the unanimous approval of the Council, may borrow outside Australia on terms set down in the approval. Although the

---

[9] The assumption by the Commonwealth of the liability for outstanding State debt was not marked by any formal change in securities held by bondholders. It was envisaged that State securities as existing at the commencement of the Financial Agreement would be replaced by formal securities of the Commonwealth in course of subsequent conversions and renewals. What might thus have been a gradual process was hastened by the National Debt Conversion of 1931, whereby almost the whole internal debt was converted under stress of a grave economic crisis, to give effect to an all round reduction in interest rates. From this operation, there emerged a common form of security for Australian loans known as Commonwealth Government Inscribed Stock and Commonwealth Government Treasury Bonds.

[10] However it might be viewed in its legal setting, the State debt structure is no less real than if the State borrowed and issued securities direct to the lender. The debt obligation is, in fact, more firmly secured than ever, because under the amended Federal Constitution the Commonwealth can make laws for the carrying out of their obligations by the parties to the Financial Agreement. A law enacted pursuant to this provision, whereby the Commonwealth could by proclamation direct that specified classes of State revenues be paid to it and that moneys standing to the credit of a State in any bank could be attached and become payable to the Commonwealth, has been held valid by the High Court (*New South Wales* v. *Commonwealth* 46 C.L.R. 155).

State may issue the securities, the loans for all purposes are deemed to have been raised by the Commonwealth on behalf of the State, and the performance of all obligations to the lender is guaranteed by the Commonwealth.

With the great development in the country's capital resources in recent years the incidence of borrowings, apart from overseas conversions and renewals, has largely shifted to the local market. It is here that the Financial Agreement has its most important force. The Commonwealth and States are obliged to submit annual works programmes setting forth prospective loan requirements after allowing for amounts likely to become available in their Loan Funds from proceeds of vote repayments. Any contemplated fundings on revenue account are to be included in the programme. Should the Loan Council decide that the aggregate loan programmes cannot be financed at reasonable rates and conditions, it is to fix the amount to be borrowed, and, by decision of all the members, allot the borrowings between the Commonwealth and the States. Failing unanimous decision, one-fifth, or such less sum as the Commonwealth may be prepared to accept, is to be allocated to the Commonwealth and the balance to the States in the proportion of their loan expenditures during the preceding five years. By force of these simple provisions, the Loan Council is able to exercise an influence in the direction of a planned national economy far transcending its primary purpose as a regulating agency for State borrowings. Aligned with the Commonwealth Bank and the National Debt Sinking Fund Commission, it is a potent instrument in the maintenance of the employment level and the regulation of the public investment policy.

In reality the extent of the control which the States, joined with the Commonwealth in the Loan Council, may exercise over the general economy is apt to vary from time to time according to contemporary conditions. Given a situation (as in 1951, 1952 and 1953) in which State loan requirements run to more than the market can yield the real power of decision and the problem of financing passes from the Council to the Commonwealth Government conjointly with the Commonwealth Bank.

"Since 1927 the Loan Council has exercised an important degree of control over public investment. To some extent it was dominated by the Commonwealth Bank during the depression, and it lost ground relatively during the war, when Commonwealth borrowing for defence became all-important; but it remains one of the most important economic bodies in determining basic Australian economic policy. . . The Loan Council has, however, been subject to the growing domination of the Commonwealth Government. In questions where a majority decision is needed, the Commonwealth has always needed the support of only two States to make its will effective—it has two votes and a casting vote to one vote for each of the States. But more recently

the Commonwealth Government, with its powers over the loan market derived from its effective control of the Commonwealth Bank, has been in the position of being able in effect to veto any decision by the Loan Council with which it disagrees. So far it has not needed to use this power, but it has undoubtedly served to undermine the independence of the Loan Council, and to subject the Council itself to increasing Commonwealth domination."[11]

Legally, at least, a State is not precluded from borrowing for temporary purposes by way of overdraft or fixed deposit. But such borrowings are subject to limits fixed by the Loan Council and, as matters have developed, by tacit understanding the borrowings have come within the general scheme of Loan Council control. It is established practice for all temporary borrowings to be financed by Treasury Bills issued by the Commonwealth Bank to the Commonwealth on behalf of the States and on the authority of the Loan Council. So, also, long term loans may be raised direct from semi-governmental bodies within the State. Here the Financial Agreement merely contemplates a variation in the machinery of loan raising, for the Loan Council fixes a maximum limit for interest, brokerage and other charges. Commonwealth securities are issued for the loans, and borrowings by the State in this manner are allowed for in the fixation of the aggregate borrowing schedule. Should a State's domestic loans, together with loans raised on its behalf by the Commonwealth, exceed the total of the approved loan schedule in any year, the Council, if it so decides, may apply the excess against the State's allocation for the next succeeding year.

Of themselves important factors to be considered in any scheme for regulating public borrowings, semi-governmental bodies nevertheless are not legally bound by the Financial Agreement. It was recognised at the inception of the Agreement that authorities vested with autonomous loan raising powers could by their unrestrained operations set up competitive conditions, thus weakening Loan Council control over public loans. The position is regulated, however, by a "gentlemen's agreement" between the Commonwealth and the States, by which borrowings exceeding one hundred thousand pounds proposed in any one instance by semi-governmental bodies including Local Government authorities, are submitted for Loan Council approval. Interest rates, as well as the principal amount, come within the terms of this unwritten arrangement. Negotiation, underwriting and inscription of a loan when approved by the Loan Council are matters for the authority concerned. Although in most cases guaranteed by the State,

---

[11] "The impact of Federalism on Public Administration" (Professor Sir Douglas Copland in *An Australian Jubilee Study on Federalism*, edited by Professor G. Sawer).

borrowings by semi-governmental bodies are not guaranteed by the Commonwealth. To some extent as a result of this, but more substantially by reason of an income tax concession allowed on interest from Commonwealth loans, semi-governmental issues are characterised by a slightly higher rate of interest than that on contemporary loans raised by the Commonwealth on behalf of the States.

Influence of Agreement on Loan Account Practice. When the State legislature, by the Financial Agreement Ratification Act of 1928, sanctioned the Financial Agreement, it relinquished in favour of the Executive the formal loan raising authorities which previously it had reserved to itself. In effect the Executive, joined in the Loan Council, was permanently empowered by the Ratification Act to enter into loan commitments, including conversions and renewals, so long as these come within the cover of the Financial Agreement. The need for the practice whereby borrowings had been authorised by Parliament in the old type Loan Act thus passed from the State financial scene. But it still remained with Parliament to sanction the loan spending programme, for the Loan Council, although vested with authority to approve of loans on behalf of the State, has no power to determine the manner in which the proceeds are to be spent. In place then of a Loan Act, Parliament is concerned now with an annual General Loan Appropriation Act.

Several procedural rules are to be observed in relation to legislative sanctions to loan works. When a Loan Appropriation Act is passed, funds for the works are thereby appropriated from the General Loan Account, and this appropriation is sufficient authority for commencement of a work unless the cost is estimated to exceed twenty thousand pounds. If the estimated cost is greater than twenty thousand pounds, the proposed work must be submitted and explained to the Legislative Assembly. Should the Assembly by resolution declare it expedient to carry out the work, a duty is deemed to be imposed upon the Executive to introduce a bill for Parliament's sanction. But where certain loan works are entered into by prescribed constructing authorities, such as the Commissioner for Railways and the Water Conservation and Irrigation Commission, no Act of Parliament other than the fund appropriating Act is necessary, as the works may be carried out by these authorities in accordance with statutory powers already conferred upon them.

By constituting a Standing Committee on Public Works, Parliament may exercise a close control over loan expenditure and, as a result of investigation and report by this committee,

may have at its disposal detailed information enabling it to assess the merits of proposals brought down by the Executive. The committee has statutory powers of inquiry.[12] In considering and reporting upon any proposed work, it is to have regard to the necessity or advisability of carrying out the work, the probable returns from it and its present or prospective value. The committee is obliged to take such measures and procure such information as may enable it to inform or satisfy the Legislative Assembly as to the expediency of carrying out the work. It is to deal, however, with works only where the estimated cost exceeds twenty thousand pounds and works to be undertaken by other than prescribed constructing authorities as mentioned above.

Ordinarily, the money market is approached by the Commonwealth at six-monthly intervals. Net proceeds of each loan are distributed amongst the several governments, which then assume liability in gross amount for the portion of the loan allocated to them. In the State system net proceeds are credited to the General Loan Account, while the gross liability is brought to record in the debt accounting organisation. For financial reporting and general accountancy purposes, each loan is distinguished by the particular term and conditions under which it was raised by the Commonwealth so that to all appearances the State debt structure is the same as if it were composed of loans directly raised by the State.

The release of loan funds from the General Loan Account follows the authority of a General Loan Appropriation Act, but unlike revenue appropriations, which lapse at the close of each financial year, loan expenditure authorities remain current for two clear financial years following the one in which the Appropriation Act is passed. Even then, this lapsing may be only partial, as an exception can be made of amounts necessary to meet claims under any outstanding contract or work, and loan fund appropriations may thus remain effective for years.

Repayment of Public Debt

Debt Repayment by the State. Measures for debt repayment adopted by New South Wales up to 1928 were more or less desultory and on the whole ineffectual. Some of the very earliest loans were repaid from revenue when they matured, but, apart from this, there was no settled provision for debt repayment until the passing of a Railways Loan Act of 1867. This Act, whilst authorising a loan of £1,000,000, provided for the appropriation from revenue of a yearly sum to be used firstly in

[12] Public Works Act 1912. This principle of a Public Works Committee has not been followed for many years.

meeting interest and next in repaying the loan. Twenty-two years later, when the loan had been almost liquidated, a Railway Loan Redemption Act was passed, under which £75,000 was to be appropriated annually for railway debt repayment. Proceeds of the appropriation were to be credited to a special fund until accumulations were sufficient to pay off £1,000,000 of railway debt. Alternatively, the fund could be used in redeeming railway debentures as they fell due.

Thus far, the State's efforts at debt repayment were of a piecemeal character. A sinking fund directed at £1,000,000 of debt could not be expected to make any great impact on a total indebtedness which amounted to fifty-eight million pounds and was steadily growing. Confronted with this situation, the Legislature of 1894 called a halt to the policy of borrowings without contemporary measures for extinguishment. A provision for the creation from revenue of a redemption fund was inserted in the Loan Act of that year and also in successive Loan Acts. Thus, each series of borrowings carried its own redemption fund. Moneys in the funds were not applied immediately in redeeming debt, nor were they interest bearing. Moreover, the funds were set up merely by book transfers from revenue, and, as they formed part of the general finances, the essential safeguard of independent trusteeship did not exist.

The funds were terminated with the passing of the State Debt and Sinking Fund Act of 1904, under which the task of repaying debt in a comprehensive manner was essayed for the first time. This Act constituted a Board of State Debt Commissioners, comprising the Treasurer, the Chief Justice, the Speaker of the Legislative Assembly and the Treasury permanent head. Balances in the various redemption funds were taken over by the Commissioners. Each year, an amount of £350,000 was to be issued from revenue to the Commissioners for a sinking fund, to be used in purchasing or redeeming State loan securities. Pending its use in this manner, the Commissioners were empowered to invest the fund in government securities or deposits with the Treasurer or with the Government's bankers.

For a number of years, a policy of debt repayment was followed on those lines. Largely owing to the extent to which the sinking fund was used in retiring old deficiency borrowings, only a minor portion of the public works debt was extinguished. The effect of the repayments was nullified, moreover, by continued deficiencies on the Consolidated Revenue Fund. Under these conditions, the utility of the sinking fund was questioned, and in 1914 the State Debt and Sinking Fund Act was amended to

provide that, where at the close of a year there was a deficiency on the Consolidated Revenue Fund, the Commissioners were to repay any amount issued in that year up to the extent of the deficiency.

The State thus adverted to the indefinite sinking fund principle. For the remaining years in which the Commissioners operated until their functions were taken over by the National Debt Commission under the Financial Agreement of 1927, the contribution was regularly received from the Consolidated Revenue Fund but was repaid to that fund on the same day.

National Debt Sinking Fund. The National Debt Sinking Fund had been set up by the Commonwealth in 1923 under the control of a Commission consisting of the Federal Treasurer, the Chief Justice of the High Court, the Governor of the Commonwealth Bank, the Secretary of the Treasury and the Solicitor General. When its functions were expanded in 1927 to include the States, membership of the Commission was increased in order to give them one representative. This extension in the fund's operations accompanied the changes in borrowing practices of the Australian Governments and in the financial arrangements between the Commonwealth and the States brought about by the Financial Agreement of that year. New South Wales commenced to contribute to the National Debt Sinking Fund at 1st July, 1928.

The fund is divided into several compartments—one for Commonwealth debt and one for each of the States. Its objective, in so far as it affects the States, is to extinguish debt existing at 30th June, 1927, within fifty-eight years of that date, and subsequent debt within fifty-three years of the raising of each loan. Of the firstnamed debt, the State contributes 5s. per cent and the Commonwealth 2s.6d. per cent. per annum; of the secondnamed the State and Commonwealth each contribute 5s. per cent. per annum. Contributions are not accumulated in the fund, but are to be applied in redeeming the debt of the State or in purchasing outstanding State securities. Should the National Debt Commission deem it inexpedient to use contributions in this manner, moneys of the fund may be invested temporarily in securities of, or guaranteed by, the Governments of the United Kingdom, the Commonwealth or a State. But the Commission is not to make investments in this manner unless satisfied that greater benefit will accrue to the fund than by the redemption or repurchase of securities.

Apart from the fund contribution shared by State and Federal Governments, a further payment, equal to 4½ per cent. per annum of the face value of securities repurchased or redeemed

from the fund, is made wholly by the State. Contributions, viewed according to their duration, are thus divisible into three sections. The unit contribution payable on the debt outstanding at 30th June, 1927, is the first of these, the borrowings of each succeeding year make up a second unit series, while the annual $4\frac{1}{2}$ per cent, accretions are a third. Should operations of the fund continue for fifty-eight years in accordance with the original plan, fixed contributions for the debt outstanding at 30th June, 1927, would be deemed together with $4\frac{1}{2}$ per cent. accretions to equal this debt and would then cease. So, also, contributions for loans issued in succeeding years will cease fifty-three years after the year in which any loan was raised. On the termination of any series of fixed contributions there will cease also the $4\frac{1}{2}$ per cent. contribution on securities of a face value equal to the original borrowing to which the fixed contribution related.

Features of State Sinking Fund Contributions. The repayment periods so far outlined are concerned only with loans raised for normal works and services. By far the greater part of State debt comes within the fifty-eight or fifty-three year plan, but certain classes of debt attract more stringent sinking fund conditions, e.g., loans raised for revenue deficiencies. Because the need for retiring debt of this nature is considered to be the more urgent a higher contribution rate is laid down for it.

When a loan is raised to meet a revenue deficiency no contribution is payable by the Commonwealth but the State is to make a fixed annual contribution of not less than 4 per cent. of the loan. The payment is to be maintained for a period during which accumulations compounded at the fund rate of $4\frac{1}{2}$ per cent. will equal the amount of the loan. A contribution term of approximately seventeen years is thus envisaged. Deficiency loans included in the outstanding debt at 30th June, 1927, do not come within this arrangement. They are dealt with by joint State and Commonwealth contribution under the fifty-eight year plan.

In several years of budget difficulty from 1930 onwards, New South Wales entered into deficiency borrowings, secured partly by funded stock but in the main by short term Treasury Bills, in all totalling more than £30 million. The borrowings were of a magnitude never contemplated when the deficiency loan provisions of the National Debt Sinking Fund were introduced, and, because of the onerous nature of the seventeen year repayment method, it was not applied to the Treasury Bills portion. In 1944, the Financial Agreement was amended to give a special treatment to the bills. They were converted into debentures repayable in ascending amounts at annual intervals over thirty-nine years.

Liability was shared by the State and Commonwealth, the former to pay 15s. per cent. per annum, with accretions at the standard sinking fund rate, and the Commonwealth 5s. per cent. per annum. It was further provided by the amended agreement that all contributions on behalf of the debentures, together with accumulations thereon, were to be applied to their redemption. This somewhat unique provision for a sectionalising of the sinking fund, aimed exclusively at the legacy of short term loans left by the world depression, did not in any way vitiate the fixed seventeen year repayment obligation, in so far as any subsequent deficiency borrowings might be concerned. It affords one instance in the relatively short history of the National Debt Sinking Fund of how a fixed plan for debt repayment is apt throughout its course to require adaptation to new and unforeseen circumstances.

Another provision for special contribution is written into sinking fund legislation in order to deal with loans used in financing short term utilities. Where it is agreed between the Commonwealth and State that a loan expended upon a wasting asset should be redeemed within a shorter period than fifty-three years, the annual payment by the State is to be increased to an amount which, together with the Commonwealth contribution, will provide for redemption within the shorter period. Contributions by the State cease at the end of this period; the Commonwealth contribution continues for the full fifty-three years. As a set-off to the higher burden borne in the earlier years, the State, for the remainder of the term, is relieved in its general contribution schedule by an amount equal to the payments so kept up by the Commonwealth.

Unless issued at a discount, conversion or renewal or redemption loans do not attract any special payment, but contributions are continued for the period and at the scale fixed for the original loan. There is a marginal allowance in the fund's actuarial structure to provide for any increase in debt at the point of renewals and conversions, such as occurs for example, when a higher amount is raised under the new loan in order to finance underwriting or other expenses. Discounts rest on a special footing. Usually when a loan is converted or renewed at a discount the sinking fund is applied in paying off subscribers in the old loan to an amount equal to the discount. Thus, the capital of the debt is kept within its previous total, but this is done at the expense of the sinking fund, which, instead of reducing debt, is used merely to prevent its increase. When this happens, the State is obliged to increase its contributions to the extent necessary to make good the loss to the fund. Each conversion or renewal loan, when effected at a discount, is responsible for a special series of

contributions. They are made by equal annual instalments which, maintained over the period of the loan, are calculated with accumulations to reach an amount equal to the discount.

Perhaps the most important of the special features of sinking fund contributions is that concerned with the liquidation of overseas debt. The exchange problem associated with the transfer of sinking fund moneys from local to overseas currencies did not loom large at the inception of the fund, because exchange disparities up to that stage had been negligible, and it was considered that any costs of this nature could well be met from State revenue additional to the main contribution. For a time, this was the practice, but a later devaluation of the Australian pound by 25 per cent. in terms of sterling gave the matter a new significance. From then onwards, exchange on overseas operations was met from the fund. Therein is to be seen the most potent of adverse factors affecting the original debt repayment plan for, local and overseas combined, it has taken something like £110 to retire each £100 of debt. That the loss should be borne by the fund was recognised by Federal and State Legislatures, which in 1944 sanctioned a new provision in the Financial Agreement to the effect that sinking fund contributions are to be calculated at the Mint par of exchange prevailing on 1st July, 1927. This provision was made effective from the fund's commencement.

Distribution of Debt Repayment Burden. In devising repayment standards for the several classes of State debt, the sinking fund sponsors had to evaluate a number of factors. Above all, the need for debt repayment had become insistent in the interests of the public credit, especially overseas. Against this background there had to be considered the burden of making up the leeway from the earlier policy of virtual non-repayment, the extent to which annual budgets could be expected to bear a contribution on definite lines and, from the accountancy angle, the desirability of relating so far as possible the period of repayment to the probable life of utilities acquired from borrowings. A conjoint fifty-three and fifty-eight year repayment plan having been determined for the main debt, this plan was given force of law, and contributions at a scale originally considered necessary and sufficient to bring about its fulfilment are obligatory upon the State. Experience, as evidenced particularly by the effect upon fund operations of the exchange devaluation of Australian currency, emphasises how largely hypothesis enters into term fixation for repaying public debt and how the term as originally envisaged is apt to be departed from. It is perhaps best to forego the long-range forecast and to regard the fund merely as an

agency by which a regular annual measure of debt liquidation is accomplished. The most certain feature of this process is the fixity of its annual burden.

The incidence of this burden in the State financial system may be reviewed briefly. Because considerably more than one-half the public debt is invested in the railways and other business undertakings the State might well look to its business income to support the greater portion of its repayment obligation, leaving to the general revenues the care of debt expended on indirectly reproductive works, non-income producing utilities and other deferred revenue services. In practice the burden cannot be so clearly defined, for the capital liability of a business undertaking may be fixed on policy grounds at an amount less than the real investment and furthermore, in the last resort, ability to pay, rather than precise delineation of financial responsibility, often prevails. It might well be asked what are the principles determining the distribution of sinking fund costs? What are the fund accounting processes by which this distribution is effected?

The State is obliged under the Financial Agreement to meet sinking fund contributions from revenue. The term "revenue" as so used is sufficiently broad to permit of the State allocating the charge to any one or other of its revenue funds. Furthermore, the Financial Agreement goes on to provide that when loan moneys have been advanced by the State to a public or local authority or body constituted by State law, and the authority or body repays the moneys from revenue, the State may meet sinking fund charges from proceeds of the repayments. Nevertheless the Act by which the Financial Agreement was validated, permanently charges the general revenues with the whole sinking fund liability. Contributions then are met primarily from the Consolidated Revenue Fund and any amounts borne in turn by activities removed from the general revenues are in the nature of recoupments to that fund.

In some cases the method and extent of recoupment is fixed by the statute governing a particular activity, while in others it is left for fixation by the Executive. Capital indebtedness to the Treasury, whether determined at the investment amount or at a lesser sum, is the calculation basis; one way or another an undertaking is required to participate in the sinking fund in the proportion which this indebtedness bears to the total State debt. When a business undertaking makes a sinking fund payment the indebtedness is reduced and the undertaking is relieved of interest charges accordingly. Just, however, as State contributions to the sinking fund are increased by 4½ per cent. of face value of

repurchased securities, so also the amount to be recouped to Consolidated Revenue is added to in due proportion. In this manner, the cumulative sinking fund principle is introduced into an undertaking's debt relationship with the Treasury and in effect the rate of recoupment is accelerated in line with the increase in State payments to the National Debt Commissioners.

The law governing several major business concerns—notably the railways and the Port of Sydney authority—by making these concerns subject to the benefits and disabilities of the Financial Agreement gives them a special interest in State sinking fund welfare. Thus they are required to participate in the amortisation of loan raising costs and in debt management expenses incurred by the Commonwealth on the State behalf. On the other hand, their capital indebtedness to the Treasury is relieved progressively to the extent to which Commonwealth contributions to the sinking fund are calculated to be applicable to their capital structures. So, also, they are affected by fund gains and losses, e.g., those losses arising from overseas repayments already mentioned. In actual working their capital indebtedness to the Treasury is not reduced by sinking fund contributions at the amounts paid by them but rather by a sum equivalent to that portion of State debt which is calculated to have been extinguished from proceeds of the contributions.

Chapter XIII

THE STATUTORY CORPORATION IN STATE FINANCE

The Organisation of Corporations

Extent and Divisions of Public Business Enterprise. Australian public finance attracts special notice because of the extent to which it reaches beyond what might be called the normal governmental function, into the sphere of business enterprise and, more especially amongst the States, because of the bearing of the business sector of government activity upon the general condition of the finances. In New South Wales, for example approximately one half the annual revenue budget is made up of business revenues and expenditures. Moreover, numerous trading undertakings that do not come within the ambit of the budget are conducted by the Government or by government instrumentalities.

Although in keeping with the trend widely prevailing amongst governments, the present day status of public business enterprise in the State is not of recent origin. Rather it is a matter of historical development. The early Colonial needs and desires for national and community services had to be catered for by the Government, since the services called for an expenditure of capital and a risk of loss which private enterprise could not be expected to face. Thus introduced of necessity, but confined originally to basic utilities of a monopoly character, the system of public business ownership has been fostered by political sentiment and expanded during the past half century into competitive fields of manufacturing, industrial and commercial activity.

Public business enterprise in Australia falls predominantly to the States but it is carried on also by the Federal Government and by local authorities. The Post Office and associated services passed to the Commonwealth at federation and are exclusive to the Federal sphere. So also are later Commonwealth creations in the national bank, inter-state airways and the essentially modern activity of radio broadcasting. On the other hand, several types of business activity are shared by the Commonwealth and one or more of the States, for example, railways, shipping lines and agricultural banking. In New South Wales, the Federal and State

Governments for a number of years collaborated with a private corporation in financing works for the extraction and refining of oil from shale. In this case, however, the financial interest of the State in relation to that of the Commonwealth lessened year by year by reason of progressive addition to the funds supplied by the latter in order to meet operating losses. The share holding of the private proprietors was eventually taken over by the Commonwealth and the concern placed in liquidation. To the student of public business enterprise, the venture is worthy of notice as the only instance of the so called mixed ownership undertaking so far entered into by the State.

Local government business enterprise is not strictly part of the State domain but it may be affiliated in several ways with the central Treasury finances. Its development has been marked by several forms of State assistance, notably operating subsidies, contributions to asset installations, reductions in repayment liability for works financed by the Government and guarantee of borrowings. Such, of course, is not universally the case, for many undertakings functioning under local government charter operate entirely within their own resources. Nevertheless, locally-owned and operated utilities enter into the general scheme, and a passing reference to them is appropriate to any consideration of public business enterprise in the State.

The many public business undertakings, central and local government combined, encompass a variety of types of constitutional, administrative and financial organisation. Almost universally the corporation form of ownership and operation is assigned to them but they differ in the details of their managerial charter and the degree of autonomy possessed by their controlling authorities. Their points of difference defy attempts to classify them except in a very general way. But largely according to whether they provide services of a national, wider community or local character, they are linked with or removed in varying degrees from the central government system, and it is perhaps in terms of this relationship that the whole range of State public business enterprise may best be outlined for the purpose of a brief survey of its managerial and financial organisation.

Relationship with the State. Activities closest to the central government consist of a group administered directly by the Crown through a responsible Minister or through a statutory body on

behalf of the Crown. Foremost amongst them are the major utilities of State wide or large community concern, in the railways, the tramway and omnibus services and the harbour and ports authority. Because of the historic association of the utilities with the general revenues and the importance of their operating results in relation to overall State financial management they, as noted in an earlier chapter, are taken into the annual budget. This is perhaps the one outstanding feature which distinguishes them from a variety of other undertakings of an industrial or commercial nature affiliated more or less similarly with the Treasury. In all cases capital is derived from government sources and operating funds are kept in the Treasury, ostensibly on the self liquidating principle, but in the ultimate the general revenues are answerable for any losses that may be incurred. It is a characteristic of corporations thus joined in the Treasury financing and accounting system that they have no power to raise public loans except in the case of the tramway and omnibus services. Here, however, the power has never been exercised.

A number of different characteristics distinguish a numerically small but important group of undertakings largely outside the Treasury orbit and consisting of the Electricity Commission, the Metropolitan Meat Industry Board and the Rural Bank. The Electricity Commission is an organisation of State wide ramifications, potentially second only to the Railways in financial magnitude. At its inception the Commission took over a number of existing power supply bodies, of which all except two (owned by private corporations) had been operated by the State or by Local Government. Legislation setting up the Commission envisaged its ability to carry on within its own revenue resources and it was given a status apart altogether from the State's general finances. It commenced with a capital structure based on debt partly owing to the Government and partly to private bondholders. For capital expansion it relies on future loan allocations by the State but it may also issue public loans. It directly controls its own operating funds outside the Treasury system. So also the Metropolitan Meat Industry Board enjoys autonomy in fund control but capital is wholly Treasury financed, and the Board does not possess any outside borrowing powers other than by bank advances. The Rural Bank of New South Wales in point of administrative and financial independence, is removed furthest from the central administration and finance of all State owned business undertakings. The bank has evolved by a series of changes from a savings to a rural and homes lending institution, and more recently its charter has been extended to include general banking. It operates entirely within its own resources. Loanable

funds are derived from customers' deposits, stock issues and from a substantial volume of reserves accumulated from trading profits. Capital borrowings are State guaranteed as also is the repayment obligation for customers' deposits. In addition to its general banking business the bank conducts a Government Agency Department, the function of which is to administer several forms of rural lending on behalf of the State. Funds for this purpose are provided by the Treasury which receives the interest and other revenue proceeds at regular intervals from the bank. The Treasury also meets administrative costs of the Agency and bears any loss which it may sustain.

Within a group further again from the centre, there are the water supply services of the larger cities. Communal in character, these activities are controlled by boards representative of the interests which they serve but with a presiding officer appointed by the Government. The water boards operate by way of circulating funds within their own disposition and each board may, with the Governor's approval, raise its own loans. But the undertakings once formed part of the central State system with their capital structure founded upon State borrowings. Hence they are required, for so long as any of this loan liability remains upon them, to share the Government's interest and sinking fund obligation. Moreover borrowings effected under their own powers are guaranteed by the State. The several statutes governing city water supply services envisage an eventual debt structure made up of loans raised directly by the services under government guarantee; with the gradual repayment of Treasury loan capital and the development of their own borrowings, the water boards are in process of transition to that stage. In the meantime it is usual for the Government, in view of its capital investment and the importance of the undertakings in the general State economy, to have a representative on each board.

In a class by itself, business enterprise at the local government level is operated by municipalities and shires within the trading charter conferred by the Local Government Act. Modern needs of local communities for utility or other services often extend beyond the geographical range and capacity of individual councils, and, catering for this wider need, there has emerged a distinct unit of local government in the form of the County Council. The County Council device (not necessarily confined to the conduct of a business enterprise) is designed to bring together any number of council units in a single organisation for the purpose of works or services affecting their common interests or stretching over their several territories. A prominent instance is a bulk water or electricity supply undertaking. The Local Government Act provides

for the constitution of county councils. With a directorate drawn from the conjoined municipalities or shires, the wider county organisation does not supplant the councils, and its functions and powers are such only as the Local Government Act confers upon local bodies and which they in turn may delegate to the county council. Utilities set up in this manner operate as a rule within their own revenues but, if needs be, member municipalities or shires make contributions and, in some instances, the Government also does so by way of subsidies. A county council raises its own loans for purposes within its powers and such loans may be guaranteed by the State.

Statutory Control. Apart from basic public utilities, the avenues of business enterprise explored at one time or another by the Government in New South Wales extend to deep sea trawling, brickworks, tile works, saw mills, timber yards, bread manufacture, ship building, general engineering, metal quarries, coal mines, pipe making, fruit canning, banking and insurance. Some of these undertakings grew from mere departmental adjuncts set up to meet the Government's requirements in a particular commodity. In the main, however, State business enterprises owe their origin to definite social or political objectives, such as to regulate price charging, to develop resources that might otherwise remain latent, to assist in national defence, and predominantly to provide essential community services. The range and variety of undertakings is evidence of the wide constitutional freedom enjoyed by the State in the business field. The only prohibitions to which the Legislature is subject derive from the federation compact, and these are not many; but one other restraint is to be noticed in that New South Wales is bound by agreement with the Commonwealth not to engage in the business of savings banking for so long as this activity is carried on by the Commonwealth within the State.[13]

Good constitutional practice requires that the establishment of a public business enterprise be expressly approved by the Legislature. Of course a government might of itself start and expand any venture, relying for authority upon Parliamentary sanction to the necessary fund appropriations. But the formalities of governmental procedure to which the undertaking would then be subject are likely to impose several restraints upon its freedom in a business sense, particularly in that it may not husband its own resources but, rather, would be required to account to the general revenues for its receipts and be dependent upon annual votes for expenditure requirements. It is generally held that a

[13] Commonwealth and State Banks Agreement 1931 as ratified by State Act No. 62 of 1931.

public business enterprise is likely to be conducted to the best advantage under its own administrative and financial code and this necessarily involves sanction by Parliament. When New South Wales at the close of the first decade of the present century, made its initial entry into the industrial field, recognition was given to the need for such a code by the enactment of a single statute which laid down a standard financial procedure to be followed by all undertakings brought by proclamation within its provisions. Several concerns so functioned for a number of years but these have since passed from the scene. The blanket enactment has been repealed and present day practice is to legislate for a separate managerial and financial structure for each activity.

There is in consequence a substantial body of business management law in the State, and different types of administrative organisation have emerged from the development of this law over the whole field of utility, commercial and industrial enterprise. The board or commission system which is the most common, applies to the railways, tramway and omnibus services, the port of Sydney, the body controlling electricity generation service, the city water supplies, the Metropolitan abattoirs and the State bank, A lesser number of undertakings is controlled by a director, manager or other such expert but subject usually to the over-riding authority of a Minister of the Crown. Again, management is vested in some instances in a person designated in the governing act as administrator, this person to be the Minister or the permanent head of a department named, and there are undertakings for which a Minister of the Crown is stated outright to be the controlling authority.

Only in one case has the idea of an advisory body been adopted. From 1932 to 1950—during which period the Metropolitan abattoirs were controlled by a sole commissioner—the governing legislation provided for the constitution of a representative body to advise in matters relating to the undertaking. Actually, however, the Abattoirs Advisory Council functioned only for portion of the period in which the provision remained in the statute book. For the rest of the period the legislation was a dead letter and upon the re-introduction of the representative board system in 1950 it was repealed.

Whatever the form of administrative control may be, the practice of the State almost invariably is to apply the corporation technique to the conduct of business enterprise. Each undertaking is declared by its governing statute to be a body corporate or corporation sole, and, giving stress to the effect of this declaration, the statute goes on to say that the corporation shall have perpetual

succession and an official seal, may in the corporate name sue and be sued, be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property, and of doing and suffering all such acts and things as a body corporate may by law do and suffer. A separate legal existence with rights and liabilities similar in many respects to the corporate form of organisation widely followed in private commerce and industry is thus conferred upon the public business undertaking.

The statutory or Crown corporation as so known is not necessarily confined to business enterprise but it may be set up for other public objectives such as those of an eleemosynary character. Nevertheless it is for the conduct of a business that the corporate structure is most widely adopted. The consequences in a constitutional sense are important. So far as concerns functions assigned exclusively to the corporation, the Government is divested of executive powers and the traditional doctrine of Ministerial responsibility does not prevail in relation to these functions. Rules and procedures of departmental administration are superseded by those prescribed for the corporation or implicit in its particular business environment, so that the corporation, possessing its own charter, is not bound by what has been described as "inflexibilities" associated with orthodox public administration. In effect, the corporation becomes a branch of executive government. But just as is the Ministerial executive, so also is the corporation answerable to Parliament, which having created the corporation can restrict or enlarge its powers or terminate it at will.

Powers. Apart from the corporate attributes of ownership, suit, succession, etc., the particular powers necessary for the carrying out of a corporation's functions are granted in its managerial statute and unless they are expressly withheld, powers incidental to this purpose are to be read into the statute. In the case of the purely government owned and operated enterprise, certain matters are excluded from powers granted to most statutory corporations in New South Wales. Usually the corporation is free in relation to details of management but is subject to direction in matters of policy or of a general character affecting the wider public interest. The authority controlling the railways, for example, cannot decide what new lines are to be built. It has already been noted that, with some exceptions, business undertakings cannot raise public loans. Again, the right of approval to the issue of by-laws dealing amongst other matters with rates and charges is reserved to the executive government, and some undertakings are not permitted to sell or otherwise dispose of

land vested in them except by sanction of the same authority. While the degree of independence differs as between corporations and, moreover, detail managerial authority is apt to be expanded or contracted according to prevailing government policy, complete autonomy is the exception rather than the rule. In most cases, corporations are stated by the governing act to be subject to the direction and control of a Minister of the Crown.

Employee conditions laid down by the personnel authority for the general public service do not apply as a rule to business corporations; most possess the right to appoint their own staffs and to determine staffing conditions. The State business undertaking does not enjoy immunities from inter-departmental charges common to ordinary governmental administration but, on the contrary, it is required to pay for all services and to meet most of the charges to which private business is subject, including customs and payroll tax imposed by the Federal Government. The immunity of the Crown from rates of local authorities applies as a rule to undertakings but some meet the payments *ex gratia.* Income tax is not an expense although it had once been the practice of the State to require its industrial undertakings to pay to Consolidated Revenue an annual sum equal to the amount for which they would have been liable were income tax a legal obligation. This practice prevails nowadays only in relation to the State insurance office.

Liaison between Parliament and a statutory corporation is maintained through the responsible Minister of the Crown, to whom Parliament may direct any enquiry. Parliament is also kept in touch with the affairs of a corporation by means of annual reports, accompanied by statements of account, which the governing act usually requires the managerial authority to submit for tabling. Financial accountability is assured also through the Auditor-General who audits the accounts of corporations and may report to Parliament upon them. In carrying out his audit responsibility, the Auditor-General is possessed, by statutory prescription or implication, of powers of enquiry paralleling those conferred upon him in connection with the State's general finances.

Financial Practice

General Principles. The corporation device is intended as much to separate the finances of public business undertakings from the general finances as it is to free their management from the restraints of departmental administration. Business finance is distinguished as a consequence by several important characteristics. Foremost amongst these is the circulating fund method whereby the corporation retains control of its funds and is not required

to pay earnings to the general revenue pool, or to look to appropriations from that pool for the means of meeting its expenditures. Secondly, public business corporations adopt the accrual system of accounting; they measure operating results and net worth in line with commercial profit and loss account and balance sheet practice, whereas governmental welfare is assessed from records of fund operations, cash receipts against payments, and such assessments are never concerned with questions of net worth. Finally the business corporation, when financed from proceeds of government borrowings, attracts to itself an allocation from the public debt. Each segment of the debt invested in business undertakings is thus given a separate accounting existence within the capital structure of the undertaking, distinguished by this treatment from the mass of governmental or "deadweight" debt which falls upon the general revenue.

It is a widely accepted principle that government business undertakings should not be a burden on the taxpayer nor should they, by charging more than is necessary to meet their costs, become in effect taxing agencies. Hence the adoption of the circulating fund method, embodying as it does the idea of a self-contained financial activity. By means of a regular flow of income the fund is expected to maintain itself at a sufficiency level, so that the enterprise is able to carry on independent of ways and means action by the Legislature.

Parliament when it establishes a public business enterprise lays down the fund financing arrangements. These ordinarily provide for the centralization of revenues and expenditures within a circulating fund, and in such a case it is usual for the Act to state the location of the fund, whether within or outside the Treasury cash system, and also the purposes for which the fund is to be used. If incorporated in the Treasury system, formal sanction of the Legislature is necessary to withdrawals from the fund, but ordinarily the management statute confers a permanent authority, and the regular annual processes of Parliamentary appropriation are not invoked. This, however, is not entirely the case in New South Wales as statutes governing the funds of the railways and the port of Sydney authority make them subject to annual appropriation. Although not statutorily directed the practice also is to seek formal appropriation for spendings from the funds of the tramway and omnibus services. It is to be appreciated, however, that the appropriation process when applied to public business enterprise lacks the force it has in relation to purely governmental expenditures, because in the outcome operational needs rather than vote allocations determine the volume of spendings by a business concern.

Treatment of Profits and Losses. Various circumstances combine to bring about a wide deviation from the principle of a nicely balanced relationship between the users of a public business service and the general taxpayer. The history of government business enterprise in New South Wales is one of profits and losses, and indeed, only in rare instances have undertakings succeeded in achieving year by year a broad equilibrium between income and expenditure. The port of Sydney authority, which consistently earns a moderate surplus, comes closest to this objective. The railways have oscillated between surplus and deficiency, often to an extreme degree. Road transport services have had to turn to the general budget for assistance, and various utilities, notably city water supplies, are subsidized in one way or another from the same source. Mixed fortunes have attended State ventures of a trading character; a number have accumulated substantial reserves from surplus earnings while others have incurred losses; and on occasions the State's general revenue budget has benefited by surplus funds drawn from trading undertakings, just as it has been required on other occasions to make good losses.

For the most part, the management statutes are silent as to the contingency of surplus or deficiency. However, the Government Railways Act directs that surpluses are to be held for two objectives—one to meet losses, and the other for reductions in fares and freights. Subject to a similar provision for losses, surpluses of the port of Sydney authority may be used to reduce charges imposed by the authority. The intention expressed in the Acts governing several water supply undertakings is that deficiencies are to be made good, in whole or in part, from Parliamentary appropriations. Only in relation to one or two concerns of a minor character do the Acts provide for payment of trading surpluses into the general revenues, but the Government Insurance Office statute contains the unique direction that any funds beyond those determined from year to year as necessary for the purpose of the office are to be set aside in the Treasury for capital expenditure on the State's public hospital system.

While the disposal of corporation surpluses and deficiences in New South Wales has thus been regulated to an extent by statutory prescription, on the whole, practice has been influenced by the course of events. Most businesses have retained their profits, although as already noted, the State, seeking budget assistance, has on occasions legislated for transfer of portion of surplus funds of the more affluent concerns to the general revenues. The treatment of losses, particularly when they persist, is necessarily a more urgent matter since a corporation's ability to continue operations may well be at stake. Very often business losses fall

automatically upon the general revenues, because of the incidence of debt charges, since most business corporations are linked with the general revenue fund by force of their obligation to recoup that fund for a proportionate share of these charges, and the depletion of cash resources which ensues from sustained operating losses is apt to leave a corporation unable to meet its obligation. Of course such a disability may be countered, as often has been done, by means of assistance advances made to the corporation from Treasury cash. This practice, however, is to be viewed as an expedient, justified only when designed to deal with a passing emergency. With a continuing trading deficiency beyond the corporation's capacity to meet from its own reserves or prospective earnings, the deficiency is best given expression in the scheme of public accounting by a revenue fund appropriation.

Accounting and Financial Reporting. With the adoption of the accrual method of accounting and its complementary profit and loss statement, annual accounts of public corporations provide a guide to their profitability or otherwise in an orthodox accountancy sense. Cognizance, however, needs be taken of the fact that corporations, although to all appearances business instrumentalities, are very often agencies for the attainment of social objectives, and that the pursuit of these objectives may override considerations of profitability within the corporation. Reporting statements may not then be conclusive as a measure of real financial worth. This is especially true of public business undertakings of a higher national character, for example, railways, harbours and electricity development undertakings, all of which yield returns in an economic sense that cannot be expressed in profit and loss terms. So also utilities serving lesser communities may contribute to the general well being, and perhaps only in the case of those trading concerns that have but a minor bearing on the general public welfare, do net profit or loss figures attain a significance paralleling that in private finance. It follows of course that limitations fundamental in character will exist in financial reports of government business undertakings irrespective of whether the accrual system of commercial finance or the cash system of public finance is adopted. As tests of management and as a means of showing effects of policy as well as for other good reasons the value of the accrual method of accounting cannot be questioned, and the wide spread vogue of that method amongst public business undertakings points to its general acceptance as the one best suited to this sector of government activity.

Where the governing act is silent, public corporations are free to determine the form and content of financial reporting state-

ments. A number in New South Wales are in this position, but others are required by their statute to submit accounts in a form prescribed, or as approved by the Auditor General. The trend of legislation is to give recognition to the need for a co-ordinating and revising authority such as the Treasury or the Auditor General, both in the interest of standardization and to ensure adequacy and clarity of information. There is to be noted also the discretionary status of the Auditor General, since that officer in reporting to Parliament upon the affairs of business undertakings may submit their accounts in a manner of his own choosing. Financial reporting in the case of a public business corporation is not subject to the restraints common to the governmental sector of public finance, but it is not practicable to disassociate the corporations altogether from the government environment. Nevertheless the form and content of their reporting statements accord substantially with commercial standards and such divergences as exist will be found to flow in the main from fundamental difficulties in applying modern accountancy procedures and terminologies to the traditional usages of public finance.

Capital Structure. The State business corporation, when empowered to conduct its own borrowings, may issue securities in the form of stock, bonds, debentures, mortgage deed or otherwise, in accordance with rules set down in the governing statute. On the other hand if loan finance is provided by the Treasury there is no formal issue of securities. The initial capital indebtedness may be named by the statute or it may be determined as statutorily prescribed, for example, by executive proclamation based upon a ministerial certificate or upon the recommendation of a Capital Debt Committee. The amount of this capital as varied from time to time by fresh issues, concessional reductions and repayments is signalized simply by entries in the books of the corporation and the Treasury.

When so interlocked with the government financial system the capital organisation of State-owned corporations is regulated by rules and procedures more or less peculiar to public finance. The corporation is not looked to for any proprietorship return analogous to profit distributions or dividends as known in private finance, but it is required to pay interest on capital investment, and such becomes a charge on earnings prior to surplus determinations. Broadly speaking, the interest commitment accords with the amount which the Treasury pays on an equivalent proportion of public debt, but a few corporations are conceded a fixed rate, while some others pay on capital which has been

written down. In no case, however, are the particular terms or conditions of government raised loans traceable within the capital structure of a corporation; the practice of the State is to form a common pool of loan proceeds from which corporations derive their capital requirements and in the same manner of pooling they participate in the aggregate year to year interest liability.

Similarly the sinking fund plan of debt repayment to which the State is bound under the Financial Agreement with the Commonwealth, obtrudes in the financial relationship of business corporations with the Treasury. Of necessity they are required to assume a proportionate share of the sinking fund burden, so that a method of liquidating capital from revenue is thrust upon them. The obligatory contribution is in itself indicative of the limited financial autonomy to which statutory corporations are subject for it gives an inelasticity to measures available to the management for maintaining the capital structure. In the accounts of undertakings it operates variously in that some rely wholly upon the contribution as a means of capital preservation, while others make a dual provision by way of contributions to the sinking fund and to depreciation or asset replacement funds. Practice has yet to develop to the extent of aligning the several forms of contribution, either singly or in combination, with the particular requirements of each corporation.

Chapter XIV

STATE BUSINESS ACTIVITIES

Public Utilities

Gas and Electricity Supply Organisations. The manufacture and supply of gas, unlike other utility services, belongs traditionally to the sphere of private enterprise but the financial operations of privately owned gas companies are regulated by statute to such an extent that, in point of protection afforded the interests of consumers, they might be regarded in much the same light as a publicly owned corporation. In New South Wales, operations of gas companies are controlled by a Gas and Electricity Act which fixes the maximum dividend rate that may be distributed on ordinary and preference shareholders' capital and lays down a limit to amounts that may be set aside from revenue for depreciation and other reserves.

Gas companies are obliged to sell their product at not more than a standard rate fixed by the Gas and Electricity Act. This rate may be varied by the Governor's proclamation on application by a company or at the initiative of the responsible Minister, but only after investigation and report by a board of inquiry. A company that is able to operate within its income in any year whilst charging less than the standard rate may transfer part of its profits to general reserve, save that any sum so transferred is to be limited to the aggregate value of the difference between the average unit rate actually charged and the rate allowed by law. The general reserve so formed may be utilized for the payment of dividends in a year in which profits are insufficient to permit of the company paying the statutory rate.

A depreciation charge is permitted against revenue up to three per cent. of a gas company's assets, the charge to be calculated by the reducing method. So also allocations may be made from revenue to a special purposes reserve. Subject to a fixed maximum amount to be accumulated in the reserve, annual sums may be added to it up to one half of one per cent. of the aggregate share and loan capital, and the special purposes reserve is to be used to meet

(a) expenses incurred by reason of accidents, industrial disputes and other circumstances which due care and management could not have prevented, and (b) expenses incurred in the removal of plant or works.

In all, the law allows gas companies to earn no more than is calculated to be necessary to meet operating expenses, to provide for replacements, to pay dividends up to a prescribed maximum, and within rigid limitations to set up contingency and general reserves. Should earnings exceed these requirements the excess may be carried forward in the Profit and Loss Account but the sum so carried forward is never to exceed that necessary to pay one year's dividend.

While the gas supply monopoly has thus remained a matter of legislative regulation rather than direct public participation, electricity with its more modern development and by reason of its wider community and national ramifications has attracted the active interest of the State. Until the passing of an Electricity Commission Act in 1950 the field had been shared largely by central and local government authorities. Nearly one half the electricity supplied in New South Wales was generated by State owned and operated undertakings, a corresponding proportion by the county council authority set up for the city of Sydney and environs and the remaining supply by local government bodies and private corporations operating under franchise. Owing to the occurrence of good, comparatively easily won deposits adjacent to the main centres of population, development of electricity generation has been based for the most part on coal. Work has recently commenced on the construction of hydro-electric plants in the Snowy Mountains Area in the south-east corner of the State but a number of years must be expected to pass before this, the one great water power potential, is fully exploited.

The State's Electricity Commission Act was designed to centralize the control of electricity for its greatest part in a single body. The Act provided, therefore, for the acquisition by the Commission of the several publicly owned generating systems, including those of the Sydney County Council, the Department of Railways and the statutory corporation known as the Southern Electricity Supply of New South Wales. Other supply services may be taken over by the Commission in agreement with the owners and with approval of the Governor.

With capital assets exceeding twenty million pounds the Sydney County Council had been the largest individual supply authority as it was also financially the largest of the county councils. The Electricity Commission Act provides in effect for the reduction of the Council's function to the reticulation and sale of electricity purchased in bulk from the Commission. For this purpose the Council retains its corporate organization. Unlike other county bodies in the State the Sydney County Council does not derive its constitution solely from the Local Government Act but, although deemed to be a county authority within the meaning of that Act, it operates under a special charter conferred by the Gas and Electricity Act. This enactment provides for a governing body of councillors, elected for a term of three years from municipalities and shires within the county district, and it provides also for the appointment of a general manager. Administrative responsibility is divided between the Council and the general manager in a manner designed to give weight to the principle of democratic representation blended with expert control.

A long list of powers is expressly reserved to the Council. Described by the governing Act as "reserved functions" these relate in their principal financial content to the fixation of rates, charges and fees, borrowings, the voting of expenditure, conditions respecting sinking funds and investments, supply agreements, the acceptance of contracts of a major character, land and property acquisition and disposal, and the making of awards or industrial agreements. Any powers within the corporate charter not reserved to the Council may be exercised by the general manager, and the Act also vests certain specific authorities in that officer; it provides, moreover, that the Council may, with the approval of the Governor, delegate to the general manager any of its reserved functions other than the power to borrow or to make a rate.

The Council is empowered to levy a loan rate on the Unimproved Capital Value or the Improved Capital Value of all ratable land within the county district. No loan rate, however, has ever been imposed. For its revenue, the undertaking relies on sales of electricity but it also carries on trading activity in electricity appliances. The capital structure is founded upon stock and bond issues supplemented by substantial reserves accumulated from trading operations. No government funds are invested in the Council nor are its borrowings guaranteed by the State. Financially the Council is wholly a self-contained and autonomous body. Its accounts are audited by the Auditor-General who is required after each year's operations to furnish his report to the Council and to the responsible Minister.

Electricity had been generated by the Department of Railways primarily for traction purposes but the department also had carried on an extensive trade in bulk supply to retail distributing authorities. Under the Electricity Commission Act generation services controlled by the Department of Railways passed to the Commission. Assets and liabilities of the Southern Electricity Supply of New South Wales also were taken over. With the disappearance of the larger individual suppliers there remained outside the Electricity Commission something like one hundred and fifty more or less minor supply systems owned by municipal and shire councils and franchise holders.

State Co-ordination and Control of Electricity Supply. Two government agencies are concerned in the planning and co-ordination of electricity development in the State. One of these —known as the Electricity Authority of New South Wales— was created by legislation of 1946; the other, the Electricity Commission, dates as already noted from 1950.

Because the operation of light and power utilities had been left to many separate bodies, each concerned only with the needs of individual city or urban communities, it was argued that electricity development in the past had not been planned so as to serve the State as a whole. Financial considerations hindered the extension of supply systems beyond the limit of profitable operation with the result that the systems penetrated only to a small extent into rural areas. Even in the more closely settled rural parts of the State not more than a small percentage of farms was served with electricity. The control of electricity development and the sponsorship of measures to deal with the economics of rural electrification were held to be matters best dealt with by a central body. Hence the institution in 1946 of the Electricity Authority of New South Wales as a planning and co-ordinating authority. For the time being it has continued to function side by side with the Electricity Commission set up four years later.

Chiefly the objectives of the Authority as stated in the Electricity Development Act were to promote and regulate the erection and extension of power stations and transmission lines, the inter-connection of power stations, the inter-change of electricity between supply services, the extension and improvement of electricity supply within rural areas and the adoption of plant and equipment standards. So far as these functions relate to the inter-connected system controlled by the Electricity Commission they have now been taken over by that body leaving services outside the Commission's ambit to the care of the Authority. The Authority obtains its financial means from contributions by major

electricity supply utilities within the State supplemented if need be by Parliamentary appropriations. Funds so obtained are held in an Electricity Development Account at the Treasury and from this account the Authority, with the approval of the responsible Minister, grants loans or subsidies to Local Government councils and other supply bodies for or towards the cost of electricity works, including the extension of supply to rural areas.

Primarily the purpose of the Electricity Commission is to generate and supply electricity but the Commission is empowered also to promote and encourage the use of the natural resources of the State for this purpose. It may enter into agreements with the State's Water Conservation and Irrigation Commission, the federally constituted Snowy Mountains Hydro-electric Authority and with other public bodies for the use of water for hydro-electric generation.

In administrative and financial organization the Commission more or less follows the usual pattern of State utility enterprise. The governing Act declares the Commission to be a corporate body but subject in all respects to the control and direction of the Minister. Aiming at the preservation of the existing domain of local government, the Act, with prescribed exceptions, prohibits the Commission from selling electricity within any area without the consent of the council concerned; the Commission is thus intended to be a generating and transmitting authority supplying electricity in bulk for reticulation and sale by local governing bodies.

By taking over existing supply services of a major character the Commission acquired a ready made capital structure composed in part of loans owing to the State Treasury and in the remaining part to private lenders. For its future development the Commission may, with the Governor's approval, raise its own loans and it may also participate in allocations from government borrowings. It is under obligation to recoup the State in due proportion for contributions to the National Debt Sinking Fund and to set up a reserve for loan repayment for every loan raised outside the Treasury system. Subject to the over-riding control of the Minister a broad measure of administrative and financial autonomy is granted the Commission. It may appoint its own officers, establish a superannuation scheme for them, control its funds without recourse to Parliamentary appropriations and decide the extent and content of developmental programmes. Except that electricity for traction purposes is to be supplied to the State railways and tramways at cost the Commission may determine supply charges. The Commission's accounts are audited by the Auditor-General,

whose powers in relation to the audit are declared by the governing Act to be the same as those conferred upon him by the State's general audit statute.

Water Supply Undertakings. The conduct of water supply utilities falls more to the sphere of Local Government than to the central State Government. It has already been noted that these services in the larger city communities have attracted the board form of organization and that, apart from financial associations surviving from their earlier inclusion in the Treasury system, they are, in its broadest sense, part of the State's Local Government domain. Beyond the larger city undertakings and also several bulk supply concerns owned and operated by the State, there are a large number of water supply services of various size and importance carried on by municipal, shire and county councils.

For many years Local Government councils leaned on the State for both technical and financial assistance in the construction and operation of water and sewerage undertakings, for the councils did not have the technical skill available in their staffs nor were they able under their borrowing powers to arrange loans of such long duration and under such favourable terms as they were able to get from the Government. Early legislation provided for the construction of water and sewerage schemes by the State's Department of Public Works and for their transfer on completion to councils on the basis that the councils would repay the cost, as proclaimed, by fixed instalments of principal and interest. Often, however, part of the cost fell by default of councils upon the Treasury. The situation thus created was dealt with by legislation of 1935 which aimed at regularizing the repayment obligations of councils in accordance with their capacity to meet the costs and, at the same time, sought to stimulate local initiative in the development of water and sewerage services. Councils were relieved of the liability of repaying portion of their debts on the understanding that they would discharge the remaining portion from proceeds of refinancing loans to be raised by them from private sources. In arriving at amounts to be written off, the Government was assisted by an Advisory Committee which enquired into the repayment capacity of each scheme on the basis of revenue which it might be expected to earn, calculated at 25s.0d. per head of population served with water and 21s.0d. for sewerage. The relationship between the Government and the councils, emphasized in the long standing debt repayment plans, was thus ended by writings off and by repayments made from refinancing loans. But the legislation retained the principle of subsidy both by way of Treasury grants towards the costs of any

new works which a council might undertake and by annual contributions to enable councils to meet the liability for interest in excess of $3\frac{1}{2}$ per cent. per annum on loans raised by them.

While the financial organization of water utilities owned by councils is standardised by the Local Government Act, the larger board controlled services are governed by individual statutes. These statutes more or less follow a common financial pattern. Finances of the boards are segregated into funds for water, sewerage, drainage and general purposes and the Acts provide that each fund must be operated separately, that is to say, a surplus on one fund cannot be used to offset a deficit on another, although cash may be loaned from one fund to another by authority of, and under conditions fixed by, the Governor. The boards are vested with power to levy water, sewerage and drainage rates and also loan rates. But the Acts lay down rating limits, and various types of properties owned by the Crown or held for charitable, educational and religious purposes are not subject to rates. In practice the boards adopt the system of rating properties by assessed annual values.

Proceeds of rates, supplemented by special charges for water supplied in bulk and for water taken by rate-payers in excess of rating allowances, make up the fund revenues. These revenues are wholly controlled by the boards, subject to certain statutory prescriptions, of which perhaps the most important is the one requiring the boards to set aside revenue for loan repayments to an extent not less than that intimated in the application for the Governor's approval to any loan raising proposal. In addition to sinking fund measures thus imposed upon them the boards frequently adopt the practice of making allocations from income to a renewals and replacement reserve.

Broadly speaking, the Government is engaged in the direct operation of water utilities only where wider national interests are to be served or where, having constructed large water storage headworks primarily for irrigation, it is able to provide a bulk water supply to local bodies over a wide area. The South-West Tablelands system which serves a number of councils in bulk from water stored at Burrinjuck Dam is the largest water utility owned and operated by the State and amongst the remaining schemes are two constructed in collaboration with the Federal Government during World War II.

The financial and accounting organization of government owned water supplies is more or less uniform and similar to that prevailing amongst utility and industrial enterprises fostered through the State's Department of Public Works. Capital assets

are acquired from allocations from General Loan Account and the undertakings are required to pay interest and sinking fund charges thereon to the Treasury. They are provided also with a Working Account from which they may meet expenses without recourse to Parliamentary appropriation but subject to expenditure priorities named in the governing Act: firstly, management, operating and minor renewal costs; secondly, interest on capital cost; thirdly, contributions to Renewals Reserve and finally, debt repayment. Thereafter the Working Account may be applied to any purpose incidental to the conduct of the undertaking. Amounts set aside for renewals are to be transferred to a separate Treasury account from which they may be invested in public securities. Renewal funds may be drawn upon in any available sum for renewing or replacing capital assets but when accumulated beyond a stated ratio of asset values the funds in excess of this ratio may be used for extensions to the undertaking.

The Public Insurances

Principles of Government Insurances. The variety and extent of insurable hazards to which a government is subject give the question of public insurances a considerable budget importance. The burden of costs from these hazards may be regulated between fiscal periods or they may be allowed to fall unevenly should any hazard mature. By the first method public risks are insured, either through outside agencies or by means of an internal fund, and by the second method, a government takes no insurance action, preferring to make good any loss by a fund appropriation if and when such a loss occurs.

The outside insurance method is the most effective from the security viewpoint but it is the most costly. It reduces government insurance practice to the payment of annual premiums and, as these include not merely the risk allowance but also a loading for administrative costs plus underwriting profit, a government when it insures its properties might be expected to pay over a lengthy period a sum greater than the losses during the period.

The internal fund method, however, is free from this disadvantage. It is particularly suited to the fire hazards of a government inasmuch as they are extensive in number and widely scattered with the danger of calamitous loss from any one happening relatively small. Furthermore, the essentials of a self insurance plan, namely, ability to build up a fund speedily and to maintain it at an adequate amount, are within the capacity of a government. As with the self insurance method, a government by re-instating from its own resources properties

destroyed or damaged by fire, avoids any costs beyond actual losses. But this practice is nowise a form of insurance and, besides being uneven in its results between funds and between fiscal periods, could be a source of embarrassment to the budget in a particular year.

Government property insurance practice in New South Wales is based partly on the internal fund principle and partly on premium payments. An insurance fund known as the Treasury Fire Risks Account is kept in the Treasury. The fund is constituted under an Act of Parliament whereby wide authority is granted to the Treasurer to use it at his discretion in meeting losses of government property by fire and/or lightning. In practice, properties deemed to be within the claim meeting capacity of the fund are left to it. Risks of an outstanding character in point of amount and hazard are covered by insurance. The Treasury Fire Risks Account may be invested in government securities and interest therefrom is to be credited to the account or to Consolidated Revenue in the proportion determined by the Treasurer. The Account was originally established at £200,000 by transfer of this amount from accumulated surpluses of the State's Insurance Office. It was later increased by stages to £1,000,000 and administrative practice aims at maintaining it year by year at that figure.

The Treasury Fire Risks Account is designed to protect only governmental assets, that is to say those properties where, if insured, the premiums would form a charge against Consolidated Revenue. Risks of government business undertakings thus do not participate. Insurance practice of a business undertaking is a matter for determination by the management but in most instances the limited scope for an undertaking to spread the risk over a wide number of insurance units or to accumulate a sufficiently large fund compels recourse to insurance. The Departments of Railways and of Government Transport each of which has built up internal insurance funds out of revenue are instances, however, of self insurance policy.

Different altogether to fire hazard in its nature and incidence, workers' compensation liability does not require a large fund accumulation. Claims in a large concern might be expected to approach a common aggregate from year to year, thus resulting in a regular annual charge, which could be met from revenue instead of by insurance. On the other hand workers' compensation requires special administrative agencies such as medical bureaux and claims investigatory services which might best be left to a central insuring organisation. Furthermore, by insuring the liability at rates based on costs, all contributing activities

within the Government are made to bear a regular annual proportion of the actual expense. Workers' compensation, therefore, attracts the insurance method. With some exceptions the practice of the State Government and governmental bodies is to insure this form of liability.

Similarly with the remaining types of insurable risks it is customary for the Government to insure. There is a fund in the Treasury, however, to meet losses of public moneys through default of accounting officers. This fund was established in past years from fidelity guarantee contributions by public officers and as the risk is now deemed to be covered by the amount accumulated it is not the present day practice to resort to insurance.

The Government Insurance Office. Until 1926 insurances of the Government were arranged through a special insurance branch within the Treasury. Parliament in that year passed an Act extending the scope and benefits of workers' compensation and at the same time established a Government Insurance Office, primarily to provide employers with a means of insuring their liability under the new Workers' Compensation Act, but also to set up an office medium for the management of the public insurances. Internal insurance funds which had been accumulated in the Treasury were taken over by the office as its commencing capital.

The establishment of the office was sanctioned by Parliament in the Government Insurance (Enabling and Validating) Act, 1927, the Colonial Treasurer through a general manager being the controlling authority. Apart from workers' compensation, business of the office was confined by the statute to insurance risks of the Government, public bodies, and prescribed classes of insurance relating to private individuals. A wider charter was granted by legislation passed in 1941 when the office was constituted a body corporate, under a general manager, and empowered to carry on any class of insurance in the manner of a private insurance corporation. Policies of the office are guaranteed under the Enabling Act which directs that any liability arising from the guarantee is to be met from the Consolidated Revenue Fund.

The activities of the Government Insurance Office are segregated into departments for Workers' Compensation, Fire, Marine and General Accident insurance and Life assurance. Funds of each department are kept apart, but with the exception of the Life Assurance Fund transfers may be made from one department to another on loan under such conditions as the Treasurer may approve. So also annual surpluses when carried

to general reserves are segregated into special funds. The Treasury is custodian of all the funds and of investments arising from them.

To put the Government Insurance Office on a common footing with private insurance corporations the Legislature has directed that stamp duty is to be paid on policies, and the office is also required to make pro rata contribution in terms of the Fire Brigades Act towards the maintenance and upkeep of fire fighting facilities. It is provided furthermore that whilst any law relating to income tax is not to apply, the Government Insurance Office is to pay into the Treasury such sums as the Colonial Treasurer deems to be the equivalent of the tax the office would be required to pay were it liable as an insurance company for taxation. Payments, from profits, in lieu of income tax are taken into the public revenues.

All insurances of the Government and government bodies are placed with the Government Insurance Office. Except to the extent to which business derived from these sources may be re-insured, surpluses from the public insurances accrue to the government funds centred in the office which, from the angle of the Treasury, thus largely serves in effect the purpose of an internal insurance fund. The established volume of premium income from the public insurances, augmented by private business, is conducive to trading surpluses and the history of the office is one of regular annual addition to accumulated profits. Until 1941 surplus earnings were retained in general reserves but amending legislation of that year directed that a committee consisting of the General Manager, the Auditor-General and the Government Actuary is to determine as soon as practicable after the close of each financial year how much of the surplus funds of the year is reasonably required for the purpose of the office. Any excess is to be paid into a special account in the Treasury and applied therefrom in making advances to the Hospital Fund for the provision of new buildings, improvements, additions, new equipment and furnishings for public hospitals. What is thus contemplated in the governing statute is that annual surpluses, determined after adequate provision for unearned premiums and outstanding claims, and with due regard to further reserve requirements of the office, are to be used in making additions to the capital structure and equipment of hospitals throughout the State.

Trusteeship of Private Estates

Office of Public Trustee. There are several public companies carrying on the business of executors and trustees in New South Wales. They are sanctioned by special Acts of

Parliament which lay down safeguards in the interest of trusts committed to their care, one such safeguard being that all the capital, paid and unpaid, is to be liable for the proper administration of estates. Again, by way of specific pledge, public securities totalling £20,000 are to be taken out by a trustee company in the name of the Colonial Treasurer, transferable only with the joint consent of the Treasurer and the company, or by an order of the Supreme Court. The authorising act imposes a limit to the rates of fees chargeable by a trustee company.

It is the advantages to the community from the corporate form of management of trust estates — administration by experienced officers, permanency of the organization, security and guarantee of integrity—that prompt a government to enter into the business of trusteeship. In common with a number of countries throughout the British Commonwealth, New South Wales engages in the business of an executor and trustee. Since 1913 there has been a public trust office conducted in much the same manner as a private trust company and controlled by an officer known as the Public Trustee. Until that year the State had been concerned only in the administration of estates where the court so ordered in cases of intestacy. The office of Curator of Intestate Estates through which this function had been exercised was abolished by the Public Trustee Act of 1913 and the authorities and duties of the office were grafted into the new organization. The Public Trustee Act constituted the Public Trustee a corporation sole, with power to carry on the business of executor and trustee, and vested with the authorities necessary for that purpose.

The functions of the Public Trustee may be briefly stated. He is capable of being appointed and may act as a trustee, an executor or administrator including administrator pendente lite, a collector of estates under an order of the court, an agent or attorney, a committee, manager or guardian or receiver of the estate of an insane or mentally incapable person and a guardian or receiver of the estate of an infant. Several other functions not derived from the Public Trustee Act, but from other acts or instruments have at one time or another devolved upon him. Thus, under the Local Government Act it was for a long time the function of the Public Trustee to sell land at the request of Councils where rates were in default; he has acted as custodian of a sinking fund on behalf of English investors in a loan raised by a local government authority; the care of certain patriotic funds subscribed by the public has been entrusted to him; he has managed and collected rents from home building schemes carried out by the government; and by virtue of his office he is the

Commissioner of Dormant Funds under the Dormant Funds Act, 1942.

In his fiduciary capacity the Public Trustee is subject to the general law of trusteeship, but the Public Trustee Act sanctions a number of special procedures which are designed to simplify and shorten legal processes of his office and to cheapen costs of administering small estates. Otherwise the Public Trustee is to have powers, duties and liabilities, be entitled to the same rights and immunities and be subject to the control and orders of any court in the manner of a private person acting in a similar capacity. He may decline to accept a trust or he may accept it conditionally; but not on the ground only of the small value of a trust estate. The Public Trustee cannot accept any trust under a deed of arrangement for the benefit of creditors nor a trust exclusively for religious purposes.

Public Trust Office Finances. The State does not seek any profit from the operations of the public trust office nor is it contemplated that there shall be a loss. Fees of the office are to be arranged from time to time so as to produce an amount equal to expenses (including such sum as the Colonial Treasurer may determine as necessary to provide for the contingency of loss), and no more. Receipts from fees are paid into the Treasury where they are taken into the public revenues and expenses of the office are met therefrom by annual appropriations. The Consolidated Revenue Fund is pledged by the Public Trustee Act to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be obliged to meet, except where the liability is one to which neither the Public Trustee nor any of his officers has contributed and which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted.

In most country centres the Public Trustee acts through Clerks of Petty Sessions who may attend to the local administration of estates, collect moneys and make disbursements. In the metropolitan area the work is carried out through the central organization. Trust receipts are paid into a bank account which is operated upon directly by the Public Trustee. Moneys of the office are not within the disposition of the Treasury although under the arrangement explained in a previous chapter, they are included in the Treasurer's banking account and thus form part of the Public Account.[14] They may be withdrawn at will by the Public Trustee to meet the needs of estates, or for investment.

Investments of trust moneys may be made on behalf of

[14] See page 57.

individual estates singly or by means of a common fund. Varying the rule of trusteeship that moneys of one estate shall not be mixed with another for investment purposes, the Public Trustee Act directs that balances to the credit of current accounts of estates are to form a common fund available for investment in manner laid down. But estates are to be excluded from the common fund where this method is expressly forbidden by the instrument of trust or where another person, acting jointly with the Public Trustee, objects to this form of investment.

The common fund may be invested in authorized trustee securities or in interest bearing deposits at the Treasury subject to a maximum deposit of £500,000. The fund may also be used in making advances to an estate or to a person beneficially interested in an estate. Earnings from investments and advances are to be credited in the first instance to an Interest Suspense Account whence the Public Trustee may allow interest to estates at such rates and such times as he may determine. All capital balances of estates joined in the common fund are to share in distributions of interest but income balances may participate only where in the opinion of the Public Trustee such income should be interest-earning. The Public Trustee may at any time withdraw moneys of an estate from the common fund for any purpose relating to the estate or for separate investment.

Earnings of the common fund may also be set aside from the Interest Suspense Account to form an Estates Guarantee and Reserve Account. Any profits from realization of investments are also to be carried to this account. The Estates Guarantee and Reserve Account is available to protect the capital structure of the common fund, to meet any expenditures incurred by the Public Trustee in the operation of the fund, or to meet legal costs not chargeable to any particular estate or unable to be met by an estate. Where after crediting estates with interest and providing for allocations to the Estates Guarantee and Reserve Account there is a residue of earnings from the common fund this residue may be taken by the Public Trustee towards meeting the office expenses.

Although, as explained above, trust funds controlled by the Public Trustee are wholly within his disposition he is obliged to pay to the Treasury balances of intestate estates unclaimed for six years or more. Unclaimed balances when so lodged at the Treasury are not taken into the general revenues but are held in trust, the Treasurer being obliged to meet any later claim which might be substantiated against an estate.

Actually part of the unclaimed balances of intestate estates has been utilized in acquiring office premises for the Public Trustee. The Legislature in authorizing this use has laid it down that the acquisition cost together with interest thereon is to be a charge upon the premises until recouped from revenues of the public trust office. This charge is to be met by annual payments over a period fixed by the Governor which by statutory prescription is not to exceed fifty years.

Marketing of Primary Products

Co-operative Marketing. From the viewpoint of government the marketing of primary products is a matter for legislative and administrative action rather than of financial concern. Even then, in the administrative domain the State takes a secondary part, for management of marketing organizations is left to boards or societies elected by the producers concerned. The self assigned function of the State is to foster and assist these bodies. Thus, under the Marketing of Primary Products Act there is constituted a Marketing Bureau, one of the duties of which is to co-operate with marketing boards and associations of producers in promoting and facilitating collective marketing. Expenses of the bureau are met from Consolidated Revenue.

Institutions for the collective marketing of primary products are a well established and expanding feature of the Australian economy. Although the advantages of co-operation attract the association of producers on their own initiative, voluntary co-operation is not wholly satisfactory, because it is subject to the whim of the individual. Often there are those who remain outside the common pool hoping to profit from their superior individualistic enterprise or, without contributing to its costs, to gain the advantage of conditions established by a co-operative organization. Given a sufficiently large number of non co-operative producers their actions could jeopardize the success of co-operation among the more willing producers. Largely because of this fact the State at the express wish of producers has invoked its legislative powers in order to give legal compulsion to the collective system of marketing in any case where a sufficient number of producers of a commodity express their desire for this system. The legislation is known as the Marketing of Primary Products Act and the instrumentalities set up to carry out the provisions of the legislation are called marketing boards. The boards are not agents of the Government nor are they Crown instrumentalities. With the greater part of their membership derived by election from among the producers themselves they are predominantly concerned with the interest of producers. They include, however,

a minority number of government nominated members to assist and advise them. The boards are bodies corporate clothed with all the powers of such.

Fundamentally the objective of State marketing legislation is to promote primary production by establishing and stabilizing a set of conditions whereby producers can obtain a fair economic return for their product. This statement is merely a generalization upon a series of processes, often of a complicated nature, which devolve upon a marketing board. These involve the regulation of the supply and prices of commodities by means of their orderly allocation between markets, local and overseas; the elimination of speculation by outside interests; the spread of returns from high and low priced markets evenly amongst all producers; the reduction of marketing costs to an efficient minimum; the equitable distribution of these costs over the product; and the encouragement by advertisement and propaganda of the increased use of a commodity controlled by a board.

The shadow of section 92 of the Federal Constitution (". . . . . trade, commerce and intercourse among the States. . . . . shall be absolutely free") hangs over all organizations for the orderly marketing of primary products in Australia. Each State may control production inside its borders and it may also regulate marketing of a product within the same confines. But the States cannot control interstate or overseas trade. Hence there will be found marketing boards throughout the States, each concerned with its own territory, while overseas selling operations are in the hands of Federal bodies. To overcome the disabilities arising from judicial interpretations of section 92 the various State boards operate amongst themselves on a basis of voluntary restraints and this is to an extent effective in preventing interstate marketing by one State board to the detriment of another. But legally the foundations for orderly marketing on a nationwide scale are insecure. In war time it has been practicable for the Commonwealth, exercising its defence power, to carry out organized marketing in the country's main primary industries but the Commonwealth has failed in its efforts by referendum to have the Constitution altered to permit of the Parliament making laws for the marketing of primary products free of the impediment of section 92.

Finance of Marketing. The Governor's proclamation for the creation of a marketing board sets out the area in which the board is to have jurisdiction—whether the whole State or part only of it. Marketing management of the commodity produced within the declared area then becomes the care of the board.

Property in the commodity is vested in the board for disposal either directly or through distributing agencies on behalf of the producers concerned. Arrangements for marketing a product vary between boards but usually operations follow a seasonal cycle. The produce of each season is taken into a pool which is self liquidating, the return from the pool after allowing for marketing expenses and administrative costs being distributed to producers in accordance with the volume and grading of the product delivered by each producer. Interim payments to producers may be made during the progress of a pool, and it is here that the element of outside finance, sponsored by the Government, enters into a board's operations. A board may borrow in order to make advances to producers, pledging the proceeds of the product for the purpose, and may repay the loan with interest from moneys received into the pool. It may also borrow for capital purposes with provision for amortization against successive pools. The Government Guarantees Act authorizes the Government to guarantee loans raised by a marketing board and very often borrowings by these bodies are so guaranteed either in whole or in part.

For capital equipment boards rely upon borrowings or funds allocated from proceeds of pools. They have no subscribed capital nor do they hold general reserves, but they may accumulate reserves for special purposes such as the acquisition of permanent assets or the equalization of returns to producers. They may invest funds so held as reserves pending use on the purpose for which the funds were set aside. All assets of a board remain in its ownership to be carried forward from one term pool to another, subject, if need be, to depreciation charges against each pool, and usable on services incidental to the marketing function. Assets may be disposed of by the board but on a winding-up all properties and moneys pass to the Crown to be dealt with as the Governor may direct.

While the financial organization of a board is based for the most part on the general marketing statute it is in a number of respects governed by regulations under that Act. A large measure of administrative oversight is thus exercised by the Executive Government acting through the Minister for Agriculture. Moreover, the accounts of boards are audited by the Auditor-General who reports to the responsible Minister as well as to the board. Amongst matters of financial control laid down by regulation are fees, allowances and travelling expenses of board members, purposes for which part of the proceeds of sales of a commodity may be retained, publicity to be given to annual statements of accounts and the form of returns to be made by producers to a

board. To meet the particular requirements of a board, regulations may be promulgated for application only to that body. The matters which may be so dealt with are set out in the Act, which provides further that regulations designed to meet individual needs of a board may be made only on the recommendation of the board concerned. Although general in its essentials the financial organization laid down by the Marketing of Primary Products Act may thus be amplified by regulation to meet the diversity of requirements existing amongst the several boards.

Aside from boards operating under the general marketing enactment there are separate authorities set up to control the marketing of particular commodities, namely the Milk Board which administers the law dealing with the supply and distribution of milk throughout fixed areas of the State, and the Dried Fruits Board which is designed to stabilize returns to dried fruits growers and to further the interests of the dried fruits industry generally. These authorities are constituted by special statutes with functions and powers peculiar to each.

The Milk Board is as much an agency for protecting the interests of consumers as of producers. One important function of the board is to enquire from time to time into costs and returns in the milk industry and to determine therefrom a price structure embracing producers, distributors and consumers and including a provision towards its own administrative costs. All milk supplies for consumption within the area under its control become the property of the board subject to payment to producers at the predetermined rates. Out of the proceeds of milk disposed of to consumers the board pays the producers and meets expenditure incurred by it on milk treatment and distribution, administration, interest, and sinking fund for repayment of loans raised by it. The board is intended to be self-contained financially and it manages its own funds free of the State Treasury. With the approval of the Governor it may borrow by the issue of debentures, stock, or by bank overdraft, charging its properties for repayment of loans. Pursuant to its trading charter, the board may, with the Governor's approval, engage in the collection, treatment or distribution of milk on its own behalf, manufacture and sell milk products, establish and conduct cool stores and milk stores, and trade in milk products, ice and other foodstuffs.

The Dried Fruits Board does not assume ownership of, nor does it handle, the dried fruit product. Acting in concert with a Commonwealth organization and with Dried Fruits Boards in other States the board contrives to regulate the home consumption market by determining the proportion of each season's crop to be

sold in that market, and it also works to bring about an equitable allocation over all growers of the dried fruits disposed of overseas. In exercising these functions the board operates through packing houses all of which have to register under the Act and to furnish the board with statements showing each season's intake and outgo of dried fruits. Expenditures of the board are financed by means of a circulating fund kept at the Treasury the income of which is derived from contributions met by producers in accordance with the quantity of dried fruits disposed of by packing houses on their behalf. Financially the Dried Fruits Board is a self-contained organization which does not require a fixed capital structure and it is able to operate therefore without any form of State assistance.

Chapter XV

TRANSPORT FINANCE

State Owned Transport Systems

Departmental Divisions. Administration of transport in New South Wales is centred in four departments—one dealing with the railways, another with the Government tram and omnibus services, a third with highways and another with motor vehicle registration and transport co-ordination. Another authority, the Maritime Services Board, is concerned with the control of harbours and ports but this authority has always remained under separate ministerial jurisdiction (the Colonial Treasurer) distinct in this respect from the other activities which are controlled by the Minister for Transport. In the present chapter, it is proposed to treat of the finance of harbours and ports in conjunction with those of the railways and tram and omnibus services, leaving highway finance and transport co-ordination for a succeeding chapter.

The problem of overall supervision and policy direction in relation to the several transport agencies has given rise to a wide range of State legislation, often of an experimental character and short lived in many of its aspects. In 1932 the railways, tram and omnibus services and highways were brought within the ministerial ambit of a newly created Ministry of Transport. A Ministry of Transport Act and a Transport (Division of Functions) Act governed the organization but, subject to any limits to administrative autonomy imposed by these Acts, each separate controlling authority was free to act independently in its own sphere and within its own statutory charter. The Minister for Transport linked the authorities with the Executive and with Parliament.

A system of central control through a commission waxed and waned in New South Wales. In 1950, Parliament in a Transport and Highways Act created such a body for the overall study and shaping of transport policy. It named this body the New South Wales Transport and Highways Commission and provided for the appointment of a Director of Transport as its head. Since

one of the cardinal purposes of the legislation was to co-ordinate the whole system of transport, the managerial chiefs of the several agencies—railways, tramway and omnibus services and maritime services—became members of the Commission. To these were added representatives of rural industry, trade and commerce and employees in the transport industry. Although the Commission was vested with wide powers of requisition and direction, the ministerial organization founded on the Ministry of Transport Act and the Transport (Division of Functions) Act was not disturbed.

Functions and powers of the Transport and Highways Commission as enumerated in the Transport and Highways Act were :—

(a) to promote and formulate plans for securing and providing an efficient, adequate, economical and properly integrated system of public transport by rail, road, air, sea and inland waterway within the State;

(b) take such steps as in its opinion will secure the establishment and continuance of a proper standard of efficiency and economy in the conduct of the several State owned transport agencies;

(c) keep under continuous review and co-ordinate policy for the development of State operated and privately owned transport of all kinds;

(d) consider and make recommendations to the Minister on all projects for capital and other extraordinary expenditure proposed by any of the State owned transport agencies;

(e) consider and co-ordinate their annual budgets;

(f) consult with and advise local government authorities and the like upon matters relating to transport; and

(g) control and direct the several State owned transport agencies in the exercise of any of their powers, authorities, duties and functions.

The Commission system as thus envisaged prevailed only for two years. The body was disbanded in 1952 and the State returned to the pre-existing order.

Financial Organisation of the State Railways. While community responsibility for the construction and maintenance of public highways rests upon no uncertain basis, there is more an element of choice in the extent of a government's participation in the business of transport. Nevertheless, the special circumstances of some countries make participation inevitable and, indeed, public ownership and operation of transport systems, notably railways, is so widespread throughout the world that it could almost be described as a normal function of government. Economic necessity, if nothing else, has determined proprietorship in the Australian scene. With a small population, clustered mainly about the seaboard, railway development from the outset has demanded

the public initiative. Only governments backed by the credit of the country could raise the capital necessary for railway construction and face the inevitability of losses from purely developmental lines. Except for a few negligible exceptions railways in New South Wales are entirely owned and operated by the State.

The railways statute makes the controlling authority a body corporate and, as will readily be appreciated, the undertaking vested in the corporation is the largest in the State. In the past the form of this authority has varied from a single Commissioner to a Board of Commissioners. So, also, the degree of autonomy held by the authority has increased or lessened with changes in prevailing public policy. However, the railway authority has never been entirely autonomous, for in certain matters, such as the issue of by-laws dealing amongst other things with fares and freights the power of decision has rested always with the Government. That there could be conflict between the business interests of the railways and the dictates of Parliamentary or executive policy was contemplated by the Legislature and provided for in the railway statute. The Government Railways Act states that, where Parliament makes any alteration in the law which occasions an increase of expenditure or a decrease of revenue, or where Parliament or the Governor directs any system or matter of policy which produces a like result, the annual increase of expenditure or decrease of revenue is to be notified by the Commissioner to the Auditor-General and, if certified by that officer, is to be made good to railway funds. This section of the law has never yet been invoked.

Railway properties vest in the Commissioner. All earnings are credited to a Government Railways Fund which is incorporated in the Treasury fund accounting system and drawn upon by the Commissioner to meet costs of operating the services. The machinery of Parliamentary appropriation governs withdrawals from the Railways Fund so that except for interest and sinking fund contributions, which are permanently appropriated by the Government Railways Act, expenditures require annual vote of the Legislature. But in cases where it is necessary to provide for services that cannot reasonably be postponed without injury to the public interest, or where it is necessary to carry a work to completion, the Commissioner may, with the approval of the Governor, spend from the fund in anticipation of appropriation. A statement setting out details of any proposed spendings under these conditions is to be laid before Parliament within fourteen sitting days after the Governor's approval or, should Parliament not be in session, within fourteen days after the commencement of the next session.

The Commissioner may borrow from the Treasury by way of advances but he has no power to raise other loans. Capital requirements are met from the State's annual borrowing schedule. Thus loans are not raised by the State specifically for railway purposes but rather, under a general expenditure programme in which the railways participate; and the lender, whose money contributes to railway capitalisation, stands in no direct creditor relationship to the undertaking. For interest and repayment he looks to the Goverment, the credit and resources of which are pledged for the purpose.[15]

Amounts allocated to the railways from proceeds of borrowings are made available from the State's loan fund, whence they are transferred as required to the Railways Fund to meet expenditure on projects sanctioned by Loan Appropriation Acts. Railway capital debt, thus varied from year to year by new issues, and also by repayments, is formally determined in manner laid down by the Government Railways Act. After the close of each financial year a Committee of Review, consisting of the Auditor-General, the Commissioner and the Treasury permanent head, is to certify to the Governor the amount, if any, which is to be added to capital debt on account of loan expenditure during the year. In arriving at its determination the Committee is to treat interest during construction as part of the capital cost of a work, save in any case where this treatment would result in excessive construction cost, whereupon a certificate is to be issued accordingly. But the purpose of this proviso is given greater emphasis by a further direction in the Act to the effect that until such date as the Governor may proclaim, interest during construction is not to be charged against the Railway Fund. The proclamation provision has never been invoked, however, and Treasury practice has continued to be to debit interest during construction against the State's general revenues.

Interest and sinking fund contribution on railway borrowed capital are met in the first instance from the Consolidated Revenue Fund and that fund is recouped in turn from railway earnings. Broadly, the allocation follows a pro rata formula, so that the railways are not committed to any fixed rate of interest; rather, the rate fluctuates with variations in the average paid by the State from year to year over the total outstanding loans. By and large it reflects the upward or downward trend of interest on

[15] As all Australian Government loans are raised by the Commonwealth, and securities issued for the loans are securities of the Commonwealth, the public creditor looks for interest and repayment to the Commonwealth Government, which, in turn, has recourse to the States for their proportion of the liability.

government borrowings. Interest on capital is taken as a charge into the annual revenue account of the railways. Should earnings prove insufficient to meet the amount together with sinking fund contribution, the accounts show a deficit; on the other hand there is not deemed to be a surplus unless these charges are provided for in full, and the ability of the railways to achieve the latter result becomes the measure of their success viewed as a business concern. This method of appraisal, although essentially realistic, gives no recognition to the aspect of proprietorship whereby the amount earned over and above expenses of working and maintenance could be regarded as a return on the Government's investment in the railways. It is a somewhat rigid way of looking at the railway finances and, with the capital almost entirely composed of borrowings, results of operations over most years have appeared in an unfavourable light.

Rating Practice and Railway Earnings. The Government Railways Act, in authorising the Commissioners to demand reasonable tolls for all passenger and freight carriage, enunciates the broad and universal rule against unfair discrimination or preference in rating practice. Tolls are at all times to be charged equally to all persons and for all goods of the same description and no reduction or advance in tolls is to be made either directly or indirectly in favour of or against any particular company or person. The Federal Constitution touches upon this aspect of State railway conduct:—

> "The Parliament may by any law with respect to trade or commerce forbid, as to any railways, any preference or discrimination by any State, if such preference or discrimination is undue and unreasonable or unjust to any State, due regard being had to the financial responsibilities incurred by any State in connection with the construction and maintenance of its railways."[16]

In neither case, however, is the prohibition so far-reaching that the State Railway authority is debarred from adopting the varied formulae characteristic of normal railway rating practice. The rate structure may be designed to differentiate between commodities, between localities and, in certain circumstances, between individuals. Thus discriminatory rates are charged for various commodities of equal bulk; rates are adjusted according to the distance hauled; and, should business considerations be deemed to call for it, standard rates are departed from in order to attract freights that otherwise might go by road. With railways reaching into border territories the producer is encouraged by tapering long distance rates to despatch his goods for shipment at ports within the State, even though nearer shipment facilities

[16] Section 102.

may be available in an adjoining State. This practice is not of itself adjudged unfederal in character to an extent calling for intervention by the Commonwealth Parliament.

Prompted by the inroads of road competition the State Parliament in 1930 passed legislation directly mitigating the effect of the non-preference section of the Act. The Commissioners were given authority to quote special rates in particular cases for the purpose of securing the carriage of consignments which might not be obtained were the prescribed rates charged; they were empowered also to contract for freights over a period at special rates where road competition existed. But the safeguard against unjust or undue preference remained, for the Commissioners are obliged by the amending Act to report special rate allowances and term contracts to Parliament, and it was laid down that should either House pass a resolution of disallowance a special rate is to cease to have effect.

The railways being a public utility, the Legislature aims at their operation as a community service rather than a profit-making venture. The Government Railways Act eschews the profit motive. It directs that surpluses are to be carried to a Reserve Account, there to be used (a) in meeting losses incurred in any year, and (b) in reduction of rates and fares. The Act thus conforms to the maxim that the cost of the service to users of the railways should be related to the value of the service. To that end freights and fares are designed to cover cost and no more, cost in theory being made up of all outgoings including interest and provision for capital preservation.

Of necessity, this balance between cost and charges is sought only in the overall result. Railway rating in reality aims at a pool of revenue sufficient to meet the total expenditure. Freights are not based upon an intensive system of cost appraisals, but rather upon the principle of what the traffic can bear, which means, in effect, that some commodities are required to pay more than the actual cost of conveyance and others pay less. Within the latter class come grain, livestock, fertilisers, coal and other such bulky commodities, while the higher rated freights consist of those goods which possess a greater value comparatively in relation to their bulk. Manufacturers and producers of low grade commodities are thus favoured and encouraged, for to allow these commodities to be carried at the lesser rates and at the same time to achieve a payable return over all freights, high grade commodities are charged more than would otherwise be necessary. Again, freight rates are moderated according to the greater the distance carried, so that producers and manufacturers in outlying areas will not

be overburdened in placing their products at ports, markets or consumption centres.

Apart from restraints imposed by law and policy upon the railways as a profit-making agency, circumstances set a limit to their ability, under ordinary conditions, to do more than provide for essential outgoings and at times even to meet them in full. For one thing, railway freight schedules are intended to operate as an instrument of national wellbeing. Rates over the years have been fixed at lowest practicable levels so as to assist the trade and commerce of the country, to foster particular industries, to encourage exports and for other special purposes such as to ameliorate conditions of farmers in periods of drought. Again, the railways are looked to as a means of providing cheap transportation, even if this means that losses have to be made good from the general revenues. Furthermore, as the railways contribute to national development by opening up the country, thus increasing the value of the public domain and adding to the taxable wealth of the State, it is generally considered that the whole cost of their operation should not be borne by users, but rather that some portion should be met from taxation.

The Government Railways Act gives recognition to the developmental function of the railways at least to the extent of providing that part of the losses directly attributable to non-paying developmental lines is to be made good from moneys appropriated by Parliament. The Act lays down the machinery for determining lines of a developmental character and also for arriving at losses from their operation. It directs that two-thirds of the total losses, subject to a maximum annual payment of £800,000, is to be paid each year to the Commissioner. For many years this amount has been credited to the Railway Fund from the general revenues of the State. The Treasury also joins with the Department of Railways in meeting costs of various types of freight and coaching concessions.

Depreciation and Renewals Reserves in State Railway Finance. It is not so many years since the railways emerged from an era in which operating revenues and expenditures were tied in with the State's general revenue organization. Undoubtedly the prevailing attitude to the problem of depreciation was influenced by theories appropriate to the purely cash accounting methods thus applied to the undertaking since these methods did not admit of any provisions for accruing charges, but rather each year was expected to bear its proportion of expenditure necessary to keep the services in a state of efficiency. Three-quarters of a century passed and, apart from some relatively minor action in

the way of measures for repayment from revenues of loans raised for railway works, no reserves were created to maintain the capital structure. Critics of State railway finance have pointed to this fact as indicative of a present day condition of over-capitalization.

However, railway financial practice is largely a matter of historical development conditioned throughout by public policy, by changing economic conditions and by the paramount urge to open up the country. It is not surprising that some of the more advanced principles of financial accounting should have remained dormant in an undertaking commenced and expanded to serve national ends rather than to be operated in a self-contained manner. Had the railways been committed from the outset to a treatment of depreciation by methods common to normal commercial enterprise, the course of State expansion might have been retarded. It seems certain on economic grounds that railway development would have been less had, obligations of depreciation accounting to be considered, in estimates of the financial prospects of proposed new lines.

All the same, the absence in earlier years of depreciation funds has been countered to a degree by conservative accounting methods in other directions. Railway financial policy has been consistent in keeping up the operating efficiency of assets by regular appropriations for renewals and replacements. Moreover, costs of abandoned assets have been methodically written off against earnings from year to year and standard procedures govern expenditure allocations between capital and revenue. State railway practice in the treatment of renewals and replacements follows rules agreed upon by the several Australian State railway authorities. When an asset is renewed or replaced the new expenditure is charged to working expenses up to the cost of the original asset; any further expenditure is deemed to be betterment, chargeable to capital. Should the new outlay be less than the original cost the difference is credited to capital and charged against working expenses. If expenditure is incurred on alterations which are likely to produce an increase in earnings or a reduction in working expenses the cost of the work is apportioned between capital and revenue as may be determined. The capital cost of any asset demolished or abandoned is written off to working expenses, but where large sums are involved the amount may be written off during a limited number of years. It is customary in New South Wales to charge the cost of abandoned assets against Sinking Fund Reserve so that, in effect, the loss is made good from earnings by means of a provision for the repayment of debt equal to the cost of the assets.

Conjoined with a policy of carrying out renewal and replacement work as the need arises, these measures might well serve to avoid excessive capitalisation. In the very nature of railway finance, they must be expected to go a long way towards capital preservation, since the magnitude of each year's operations allows a large amount of asset reinstatement expenditure to be absorbed in the maintenance schedule. Of itself, however, the policy of "pay as you go" in railway finance is subject to the defect that it does not include any provision for accruing large scale renewals and replacements, for obsolescence, or for extraordinary expenditures that at times confront the organization. The annual revenue account may not therefore reflect the true result of a year's operations. There are those who contend that no matter how faithfully adhered to, the policy cannot be said to safeguard the capital structure adequately unless there is a complementary provision by way of a contribution to a Renewals and Replacement Reserve.

Terminating the statutory arrangements which gave no recognition to this contention, the State Legislature, when it separated the railways from the general finances in 1928, enacted a provision for a Renewals Fund. It was laid down that the fund could be used only to meet expenditure on renewals, reconstructions and conversions of railway lines, buildings, equipment, plant and other wasting assets. Any yearly proposal by the Commissioner for transfer from revenue to the Renewals Fund was to be examined by the Committee of Review already referred to,[17] and upon the Committee's report the amount was to be determined by the Governor.

The setting up of the railways as an independent financial body synchronised with the commencement by the State of contributions to the National Debt Sinking Fund, and the amending Act imposed an obligation upon the railways to share in these contributions. Railway finances thus became subject to a twofold capital commitment—one the sinking fund contribution directed to debt liquidation, and the other the renewals allocation directed to the preservation of the asset structure. As the sinking fund payment was based on a time plan it was intended to be definite in annual amount. On the other hand, the renewals allocation was to be determined by annual review rather than by rigid fixation. So far, however, as such an allocation might be practicable within the limits of available earnings, the dictates of business prudence were to be read into the statute, in that there should be a fund to answer for capital wastage due to depreciation

[17] See page 215.

and obsolescence of railway assets, and the amount contributed to the fund each year should have some relationship to the estimated wastage for the period.

In the outcome the provisions for the constitution of a Renewals Fund were never brought into operation. Shortly after the railways were made a separate financial body they passed to a period of depression, and operating results were such that an allocation to Renewals Reserve remained beyond the scope of practical ways and means. So also the sinking fund contribution was deferred for a number of years. Later, when revenues expanded under conditions engendered by World War II, a substantial annual reduction in railway debt was effected by force of sinking fund payments. Moreover, large contributions were made to deferred expenditure reserves, and although these reserves did not come within the legal machinery provided for a renewal fund, subsequent spendings from them were, in large measure, of a nature contemplated by the Legislature when it introduced a provision for such a fund into the railways statute.

It is by no means an easy task to fix a fair and reasonable amount for allocation to a reserve against railway capital wastage. Underlying the fixation is the fact that the railway budget is regularly committed to substantial reinstatement expenditures, so that each asset is replaced, repaired, or otherwise made good, as it approaches a stage at which its usefulness is threatened, the whole transport unit thus being maintained continuously at full operating capacity. Contingency factors in obsolescence, modernisation and large scale replacements are indefinite in their incidence and can only be provided for in advance by an extreme degree of arbitrariness. Moreover, the influence of transport costs upon the national economy has to be considered. Railway financial management is confronted with the duty of protecting the business interests of the concern but it is obliged also to maintain a fair balance between costs and charges against the railway user. In the same manner that the financial structure could be weakened by an inadequate reserve provision, over-burdensome provisions might react adversely upon the transport economy.

It is not difficult to visualise the latter situation were the renewals fund machinery as set down in the Railway Act applied side by side with a sinking fund contribution. Actually, the provision for the dual charge on railway earnings aims at a level of conservatism that the railways cannot be expected to reach in normal times. Whether they should do so is controversial, having regard to the public utility character of the undertaking and the obligation to perform a community service at cost. In

combination, sinking fund and renewals fund contribution, by their effect upon freights and fares, could mean an onerous burden upon the railway user.

The problem of management then is to regulate railway financial practice so as to produce a balanced result, having in view the policy of renewing and replacing assets from revenue, the obligation to pay sinking fund contributions and the need for an internal fund to meet expenditure of a nature contemplated in the renewals fund legislation. If only one of the two methods of capital preservation laid down—sinking fund or renewals fund—is to be adopted, circumstances leave no choice, for the State is committed to an annual plan of debt reduction, and the railways, as the principal agency in the debt, must be expected to bear a due proportion of the burden. But the difficulty confronting the State in applying National Debt Sinking Fund obligations to railway finances is that these obligations are directed to a system of continuous repayment of public debt which, no matter how valuable in a national sense, is not necessarily desirable or best suited to the finances of a business undertaking of the character of the railways. The essential requirement of railway finance is not to repay capital but rather to keep it intact. Such a process demands an approach to the problem of appraising annual renewal and replacement reserve requirements. Sinking fund contributions, on the other hand, are not governed by such an appraisal but rather by the rigid formula laid down in the National Debt repayment plan.

Tramways, Omnibuses and Ferry Services. Until 1939, the Government's tramway services were joined with the railways under the control of the Railway Commissioner. The transport Act of that year separated the tramways from the railway controlling authority and, through a series of changes introduced by subsequent legislation, their administration has come to be vested in a Commissioner for Government Transport. The Commissioner is given the exclusive right to construct and operate tramways for the conveyance of passengers within specified districts. He is also empowered to establish motor omnibus services.

The Commissioner is appointed by the Governor and holds office for a term of seven years. Administratively, the department which he controls—known as the Department of Government Transport—like the railways, forms part of the Ministry of Transport. Road transport services therefore come within the Parliamentary representation of the Minister for Transport. Moreover, legislation governing the tram and omnibus services

lays it down that, in the exercise of his powers and functions the Commissioner for Government Transport is to be subject to the direction and control of the Minister.

In broad scope financial arrangements of the tram and omnibus services follow the pattern of the railways, except in the important respect that the Commissioner for Government Transport may, with the approval of the Governor, raise public loans. This right, however, has never been exercised. There is a General Fund in the Treasury for each of the district services, and receipts and payments of the services are taken into their appropriate fund. Capital moneys are derived through the General Loan Account from the proceeds of government borrowings. Interest and sinking fund contributions, calculated in the proportion which the capital invested in the services bears to the total public debt of the State, are payable to the Treasury. Renewals reserves may be set up. Necessarily, heavy rates of depreciation to which portion of the assets of the services, particularly omnibuses, are subject require that renewal and depreciation reserves should figure largely in the financial arrangements. The practice of the department is to charge revenue each year with sinking fund contribution and depreciation to an extent equal in the aggregate to calculated depreciation requirements.

Except that the Commissioner may not give an undue or unreasonable preference or advantage to any person or to any particular description of traffic, fare schedules are not subject to statutory regulation. Nor does the Legislature impose a limit to profit earnings by the services. Profits are to be utilised to strengthen the financial structure, whether by retention in a General Reserve or by transfer to Renewals or Debt Repayment Reserves.

The State somewhat reluctantly entered into the business of water transport in 1951 following the financial failure of a ferry company operating over the waters of Sydney Harbour. A statutory corporation called the Sydney Harbour Transport Board was set up to purchase the assets of the company and to carry on the services, the Board being empowered to delegate the work of operation and management. These functions were in fact assumed by a privately owned company on an agency basis in terms of an agreement with the Board.

The ferry services as a consequence of this delegation of operating and managerial responsibility fit oddly into the general pattern of State public business enterprise. They are linked with the Treasury through the Board, which supplies the agent company with operating funds and finds the capital for expan-

sion from Treasury allocations, although borrowing is within the statutory competence of the Board. The governing Act is silent as to the treatment of profits or losses but so far the latter have been the rule and appropriation has been taken on the Government's revenue estimates to meet them. Financial operations of the services are not brought into the State budget in the manner of the railways and road transport services as discussed in chapter 3.

HARBOURS AND PORTS

Methods of Port Finance. Harbours and Ports are responsible for large expenditures by governments or by specially constituted port authorities. These expenditures include the original works connected with port development (harbour deepening, construction of breakwaters, erection of wharves, buildings, sheds and the like), the recurring costs incurred in maintaining the works and the annual outlay on port services. Interest and repayment on the capital invested in permanent works and the costs of maintenance and upkeep are a charge against the business of a port, and their recovery is sought by means of imposts upon inward and outward shipping and commerce.

Port and harbour charges are levied on vessels and on goods. Vessels may be required to pay pilotage, charges for berthing at wharves, light dues and a general port due calculated on the gross registered tonnage. Other charges, for the use of particular port facilities such as anchorage and buoyage may be imposed. Rates on goods are assessed on a tonnage or measurement basis on all goods brought into or leaving a port. Originally this charge arose in consideration of the use of wharves and facilities for loading or unloading, but the common practice is to make all goods subject to the charge whether use is made of the wharves and facilities or not, the principle being that the whole volume of goods imported or exported should make some contribution to port funds. In addition to charges on vessels and goods there are secondary sources of revenue available to the port authority, for instance, rents from lands and buildings, charges for the warehousing of goods and license fees for harbour craft.

In the case of the principal ports, the many forms of revenue may yield a considerable volume of receipts, allowing the port finances to be conducted on a self-contained basis. The controlling authority then retains all revenues for the purpose of meeting operating expenditures, for repaying borrowings and for building up asset renewal funds. Whether ports are to be operated to yield something more than this, so that they become profit-making

agencies, is a matter of public policy. There are those who hold that charges should be so regulated that they return no more than is necessary for essential needs and that any excess should be applied in reduction of the charges. Under this arrangement the general revenues of the Government would not derive any direct returns from the port nor would they be required to bear any of its costs. The opposite theory is that profits should not be restrained and that the more affluent ports might be expected to make some contribution to the general revenues. Proponents of this theory point to the Government's obligation to the public creditor for borrowings invested in the wider scheme of harbours and ports and its liability in the ultimate to meet losses should they occur.

In addition to the principal ports, there are outports, opened primarily to give the more remote areas closer access to the sea, and through which only coastal trade or a relatively small volume of exports or imports flows. Outports, generally speaking, are unable to meet expenditure in full from their earnings; this may be due to the small volume of business passing through them, to the excessive burden of debt charges brought about by heavy capital expenditures sometimes necessary to overcome natural disabilities in their construction, or to other causes. It is commonly held that where outports are unable to function as self-contained financial units they should be subsidised from the general revenues, rather than that their finances should be merged with those of principal ports, the contention being that any such merger would be a form of taxation on the trade of those ports through which the bulk of overseas shipping passes. This line of reasoning links the losses from outports with the enhancement to the general revenues as a result of the settlement and development of the areas served by them; otherwise, it is held, their establishment would not be justifiable on economic grounds.

Port of Sydney and Outports. For purposes of administration and finance, harbours and ports throughout New South Wales are divided into two sections, one the port of Sydney, the other the remaining harbours and ports. Up to comparatively recent years the port of Sydney was controlled by a body known as the Sydney Harbour Trust, while outports were within the jurisdiction of the Navigation Department with the Colonial Treasurer as ministerial head. In 1935, Parliament following the recommendations of a Board of Inquiry, enacted a Maritime Services Act, which constituted a single authority for all State harbours and ports. The Sydney Harbour Trust was abolished and the Navigation Department ceased to function. In their places, a Maritime Services Board (consisting

of five Commissioners appointed by the Governor, of whom two are part-time Commissioners representative of commercial, shipping and other interests concerned in the administration of harbours and ports) was appointed to administer the whole of the maritime services of the State.

This transition to a single authority was not marked, however, by any change in the financial structure of the existing harbour and ports organisation. The business of the port of Sydney continued to be kept apart from the outposts, and within the administrative framework set up by the Maritime Services Act the distinctive legislation governing the separate activities—a Sydney Harbour Trust Act and a Sydney Harbour Rates Act for the port of Sydney, and a Harbour and Tonnage Rates Act for the outports—continued to operate. The cardinal distinction between each was thus retained. The port of Sydney is a self-contained financial activity; the outports are not.

The bed and shores of the waters of Sydney Harbour, together with the lands and properties of the port organisation, vest in the Maritime Services Board, which exercises exclusive control over all harbour and port facilities. With the approval of the Governor the Board may resume lands, wharves, jetties, buildings, etc., for the purpose of harbour improvements, and it is charged with the responsibility of carrying out harbour works including the dredging of the port. The Board also manages and controls several bonded and free stores.

Towards meeting the expenditure annually incurred in dredging, lighting, port improvement and maintenance the Board is empowered by the Sydney Harbour Rates Act to collect harbour rates on goods entering or leaving the port. By the same Act wharfage rates may be imposed on goods using the wharves, tonnage rates and berthing charges on vessels berthed at wharves or otherwise using the port, and license fees upon ferries, lighters, tugs and other such harbour craft. Proceeds of these imposts, together with storage charges, rents and fees for miscellaneous services, are paid into the Treasury to the credit of the Sydney Harbour Trust Fund, which is charged with the costs of operating and maintaining the port, including interest and sinking fund on the capital investment. Disbursements from the fund are made by the Maritime Services Board subject, however, in the case of operating and maintenance expenditure, to annual votes of Parliament. Interest and sinking fund charges are permanently appropriated by the Sydney Harbour Trust Act.

A pilotage and a harbour and light rate imposed each half year on shipping, although collected by the Maritime Services

Board, is not paid to the Sydney Harbour Trust Fund, even when derived from operations of the port of Sydney. These charges are made under the Navigation Act and, in common with collections of a similar nature at outports throughout the State, they are accounted for by the Board to the Treasury, to be taken into the general revenues.

Of itself the Maritime Services Board has no power to raise loans. It may construct harbour works but where borrowings are necessary for this purpose the borrowings are effected by the State upon the public credit and proceeds are made available to the Board by appropriations from Treasury General Loan Account. The loan capital investment in the port has been built up in this manner. The Board is required to meet interest on its loan capital at the average yearly rate paid by the State on the total public debt and to pay sinking fund pro rata to the State's contribution to the National Debt Sinking Fund. Profits of the port are to be carried to a General Reserve Account to be available to meet losses incurred in any year and for the reduction of rates and other port charges. The annual profit declaration is subject, however, to a prior allocation to a Renewals Reserve.

Unlike the port of Sydney, ownership of which vests in the Maritime Services Board in its corporate capacity, outports, including the works connected therewith, remain the property of the Crown. Their administration is carried out and their revenue collected by the Board on behalf of the Crown. Administrative expenditures likewise are managed by the Board, but extensions and improvements of outports are a function of the Department of Public Works. All repairs, dredging and general maintenance of the ports are also carried out by that department.

The Harbour and Tonnage Rates Act, which applies to the outports, provides for the levying and collecting of harbour, tonnage and buoyage rates and berthing charges, the promulgation of regulations for the management and control of public wharves, lands and buildings connected therewith, and generally for the conduct and business management of outports. In broad principle charges on shipping and goods are similar to those imposed at the port of Sydney. Revenues from outports are accounted for by the Board to the Treasury where they are taken into the Consolidated Revenue Fund as part of the public revenues. Expenditures on outports are met, in turn, from Parliamentary votes—administrative and maintenance costs from the Consolidated Revenue Fund and extensions and improvements from the Loan Fund.

Chapter XVI

PUBLIC HIGHWAYS

Organisation and Management

Principles of Highway Finance. Modern high speed motor transport demands good roads. Road transport, by its influence upon costs of production and distribution, enters so much into the national economy that it is said a country pays for good roads whether it has them or not. Good roads mean a saving in wear and tear of motor vehicles and economy in fuel consumption; on the other hand, where roads are undeveloped and unserviceable, there is excessive cost of operation, and the industrial, business and social life of the community is retarded. Hence the importance of expenditure upon public highways in the outlay of governments.

Highways as a rule do not yield any direct return upon the capital invested in them. Bridges here and there are an exception, since the bridge user is sometimes required to pay a poll which, however, is apt to be lifted when capital raised to finance the bridge construction is repaid. A highway system enhances the wealth and income of a country and, because of the indirect nature of this return, it is often contended that the general taxpayer should share in the cost of road construction and maintenance. Nevertheless, present day practice is to relate highway expenditures to the volume of receipts derived from taxes upon road users. With an assured and expanding income from this source, highways have become more and more a self-contained financial activity of government.

Methods of highway finance follow similar and well-defined lines throughout most countries. Roads of a purely local character are financed by Local Government bodies, which raise funds by rates levied on lands within the area under their control. Roads transcending local interest are the concern of the central government, but Local Government bodies share in the cost. There are two standard means of raising funds for roads expenditures by the central government, one a tax on motor vehicles, the other customs and excise imposts upon petrol. A third method is by

borrowing. But the financing of roads by borrowing is merely a means of postponing the expense over the estimated life of a project, for, should interest and repayment be made a charge on the road funds, the cost, in process of time, falls upon those who contribute to these funds, namely, the road users.

As is often the case in other avenues of public finance there is, strictly speaking, no clear distinction between capital and revenue in roads expenditures. The institution and preservation of an efficient highway system is a continuing process involving construction, then maintenance and reconstruction in turn, and financial aims are well served if the funds for these purposes form a common pool whether derived from revenue or from borrowings. Nevertheless, conservative practice requires that when loans are resorted to, outlays from the loans should be on construction rather than on maintenance. Just to what extent borrowings should enter into road finance is a matter for determination according to special needs and circumstances. The practice is held to be sound whenever road projects are considered to be economically desirable and there is no other available finance, or if the charging of the cost immediately to revenue would impose an excessive burden upon the road user. This applies particularly during the early stages of highway development; when, on the other hand, a country is well served with highways and expenditures are mainly on maintenance and reconstruction, as a general rule the outlays should be met from revenue.

It is held that the system of public highways should not be built up beyond the capacity of the maintenance revenues in prospect; nor should highways be laid down or improved, either from borrowings or from revenue, in excess of their economic value. A surplus of revenue over immediate maintenance needs does not create a case for the building of a new road; rather the justification for any road project is the extent to which it is likely to contribute to development, strategic design, or the general amenities of the country.

Control and Classification of Roads. Highway administration in New South Wales is governed by a Main Roads Act, which, when originally enacted in 1924, was the first serious attempt by the State to provide administrative and financial machinery for the construction of a modern system of public highways. Successive amendments have enlarged the scope of the original measure until to-day the care of those highways which

are the responsibility of the central government has come to be vested entirely in the single government agency set up under the Act. This agency is known as the Department of Main Roads. At its head is the Commissioner for Main Roads who is the statutory roads authority for the State. The Department of Main Roads is one of four authorities which constitute the Ministry of Transport, and joined with the Department of Railways, the Department of Government Transport and the Department of Motor Transport, it completes the design of governmental control and co-ordination of transport. The Commissioner for Main Roads is charged with the duty of constructing and maintaining a well-organised system of highways with the primary objects of providing facilities for modern motor traffic, developing the vacant lands in the State, feeding the railways with traffic and giving primary producers access to markets.

In carrying out this responsibility the Commissioner collaborates with Local Government authorities, except in the Western Division of the State where Local Government has not been established and roads are wholly the care of the central authority. Bridges and ferries are part of the domain of highway administration and finance, and those bridges and ferries which, by reason of their national character, are financed and controlled by the Government are also administered by the Department of Main Roads. The Sydney Harbour Bridge, although dealt with administratively by special statute, comes within the scope of this control.

The Commissioner for Main Roads is subject to the overriding direction of the Minister for Transport. Nevertheless, the Commissioner exercises financial powers in keeping with the purpose of his office, and the several road funds through which the construction and maintenance of highways is financed are within his jurisdiction. So far as the moneys in the funds are derived from the regular sources of highway finance, the Commissioner at his discretion and without recourse to appropriation by Parliament may incur expenditure on highway construction or maintenance, purchase of plant or administration.[18] The Commissioner's right to plan and carry out highway programmes is limited, therefore, only by the volume of funds at his disposal. He may, with the approval of the Governor, levy tolls upon traffic across any bridge or by any ferry within his control.

The term "Main Roads" is intended to indicate those roads which serve the higher interests of the State and with which, therefore, the central roads authority is concerned, as distinct

[18] Where moneys are voted by Parliament from the general revenues or from borrowings, necessarily the Commissioner in spending the moneys is bound by terms of the vote.

from local roads controlled and financed wholly by municipalities and shires. Prior to the enactment of the present highways statute, a considerable mileage of roads had been proclaimed main roads, thus attracting expenditure by the Government on construction and maintenance, either direct or by subsidy to Local Government bodies. Upon the appointment of the central roads authority in 1924, these were taken over by the new organisation. Soon, however, the need for a more intensive classification of roads according to their relative importance became apparent, and main roads were next divided into three groups. First in this grouping came the State Highways, representing roads carrying traffic to and from other States or from the coast to the interior; next, the Trunk Roads, connecting with the State Highways and completing with them the skeleton structure of primary routes; and finally roads of lesser importance used principally for local purposes and classified as ordinary Main Roads. Later legislation introduced Motorways into the roads classification scheme.

Main Roads are proclaimed as such by the Governor on the recommendation of the Commissioner for Main Roads who, in arriving at a recommendation, is to be guided by a number of principles laid down by the Main Roads Act. He is to consider whether the construction and maintenance of the road is within the capacity of the funds available and in prospect, and whether it provides a link between population centres, producing districts, markets or points of consignment by rail or water. The potentialities of the road as a means of developing tourist traffic and its defence value are also to be taken into account. The Commissioner is required to weigh any representations made by Councils affected or likely to be affected by the road.

Acting also upon the recommendation of the Commissioner for Main Roads, the Governor may proclaim any main road to be a State Highway, a Trunk Road or a Motorway. Here the statute does not lay down any guiding principles. In practice State Highways are selected with due regard to distribution of population, likely developments in primary production, industrial expansion and the direction of the more important traffic arteries in adjoining States. By and large, the same sort of considerations influence the selection of Trunk Roads, while any main road designed to facilitate the movements of motor traffic may be proclaimed a Motorway.

Upon the classification of main roads—whether as State Highways, Motorways, Trunk Roads or ordinary Main Roads—depends the extent of the roads department's liability to finance their construction and maintenance. The full cost of work on

State Highways and Motorways, part of the expenditure on Trunk Roads and a lesser proportion again of ordinary Main Roads expenditure are borne by the road funds. Remaining costs are met by Local Government authorities. Moneys of the Main Roads Department may further be applied towards the construction and maintenance of certain roads for which Local Government authorities are primarily responsible. On the grounds that any such road carries a substantial amount of through traffic and thereby relieves a neighbouring main road of traffic which it would otherwise have to bear, the Commissioner for Main Roads may, on the application of a Council, declare a road to be a Secondary Road and thereupon may grant such assistance towards its construction and maintenance as he thinks fit.

Again, the Main Roads Department is concerned, apart from the normal classes of roads, with Developmental Roads, that is to say, roads which will serve to develop the more sparsely populated areas of the State, particularly by providing access to rail or shipping facilities. Here the terminology fixed by the statute is intended to isolate part of the administrative and financial machinery of the roads authority rather than to indicate any fundamental differences in the roads structure, for all roads are in fact developmental. Usually roads so classified serve small areas and are in essence local roads. Nevertheless, portion of the funds of the Department of Main Roads is earmarked for developmental roads, whether constructed directly by the department or by Local Government bodies.

FINANCING.

Sources of Highway Finance. Motor vehicle taxes constitute the major source of highway finance in New South Wales. These take the form of an annual impost upon motor vehicle owners, levied according to the weight and class of vehicles, with provision for a higher scale of rates where a vehicle has non-pneumatic or solid tyres. Broadly, the incidence of the tax varies in proportion to the wear and tear likely to be caused to the road surface, but the Act contains provision for payment of higher rates in respect of diesel-propelled vehicles.

The second source of finance consists of an impost on petrol, which so far as the State is concerned might be termed a tax only for convenience sake, since it is not within the powers of the States to impose taxes on petrol. Actually the tax forms part of Commonwealth customs and excise duties, a portion of which is diverted to the States as a grant for road purposes. The tax, therefore, is not a direct one applied particularly to road users, but it affects all petrol consumers. As it is borne in the outcome

on a consumption basis, the relative burden of the tax is governed largely by the extent to which the taxpayers use the roads. Thus petrol imposts and motor vehicle taxes are complementary in their incidence. In combination they are claimed to be the most equitable form of roads taxation. The heavy expenditure necessary to construct and maintain an efficient highway system and the special benefit to the road motor user are held to be the justification for the double charge against him.

By making available its exclusive taxation powers and machinery for the purpose of reaching the road users by the simple and effective equivalent of a petrol tax the Commonwealth co-operates with the States in carrying out a national roads policy. The principle of grants to the States from the proceeds of petrol imposts by the Commonwealth is embodied in an instrument known, when first introduced, as the Federal Aid Roads Agreement. Commencing in 1927, the original agreement was for ten years but it has been extended from time to time, usually with some variations, and it has come to be regarded as part of the permanent road finance organisation. It is a contention of the States that continued grants by the Commonwealth are essential if expenditure upon roads is to be maintained to the extent which modern conditions demand.

In the earlier years the grants arrangement provided for a fixed sum, to be allocated amongst States on a population and area basis, the latter in order to favour those States confronted with the more extensive road mileage need. After the Federal Aid Roads Agreement had operated for some years it was amended to provide that the grant should consist of a specified portion of the customs and excise duty collected on each gallon of petrol. By this provision the extent of the grant follows the volume of petrol imported or locally refined and, as duties on petrol used for aviation are excluded from the allocation, funds made available by the Commonwealth for road purposes fluctuate in broad degree according to the extent of road usage.

A stipulation by the Commonwealth in the first agreement, that proceeds of the grant could be expended only on the construction of specified classes of main roads and that they could not be used for maintenance, no longer obtains. The Federal Parliament in later legislation has supplemented the main grant by a fixed annual sum to be spent in sparsely populated or other prescribed types of rural areas and it has varied the terms of the grant in other ways. However, the basis of distribution among the mainland States, partly according to population and partly according to area, has remained throughout.

Allocations from the general revenue of the State for road purposes are not a regular feature in the finances of the roads authority, but at times it has been necessary (more especially in the early stages of the road construction programme) to resort to borrowings in order to cope with the rapidly increasing needs of motor traffic. Although interest and sinking fund charges on the loans were originally met from the general revenue, later legislation has tended to place responsibility for these payments upon the roads authority.

The Roads Funds. In order to bring about an equitable distribution of expenditure between roads in the metropolitan area and country roads, the Legislature constituted a County of Cumberland Main Roads Fund and a Country Main Roads Fund. Except for a specified proportion, which according to prevailing law may be credited to a Developmental Roads Fund, the whole yield of motor vehicle taxes other than from prescribed types of public vehicles is paid to these two funds. Somewhat less than one half of taxes collected from owners of motor vehicles in the Cumberland area (less any allocation to the Developmental Roads Fund) goes to the Cumberland Main Roads Fund and the remaining portion to the Country Main Roads Fund. Apart from any deduction for the Developmental Roads Fund, the whole of the taxes collected from owners of motor vehicles in the country area of the State is paid to the Country Main Roads Fund.

Income of the Cumberland and Country Main Roads Funds is supplemented from other sources, including Commonwealth grants from the proceeds of petrol taxes (apportioned to each fund in the ratio of receipts from motor vehicle taxes), contributions by councils, bridge and ferry tolls, and any amounts made available by Parliament, including allocations from public loans. Both funds are kept in the Treasury. They are drawn upon by requisition, the Commissioner for Main Roads for expenditure purposes prescribed by the Main Roads Act. The Act directs, however, that loan moneys in either fund are to be used only for original construction and for such proportion of administrative expenses of the Department of Main Roads as the Commissioner may consider to be reasonably chargeable to construction.

Expenditures may be incurred from the Cumberland Main Roads Fund on roads and works within the County of Cumberland, that is to say the Sydney Metropolitan area and adjoining localities, in reimbursing the Treasury for interest and repayment on loans raised for road projects within the same area, and in meeting a due proportion of administrative costs of the Depart-

ment of Main Roads. The Country Main Roads Fund may be used only for expenditure of a like nature in relation to roads and works throughout country areas.

The Developmental Roads Fund, as the title implies, is intended for developmental roads and works, and then only for construction purposes. Developmental road projects, by the very nature of things, concern the country areas of the State, so that the fund is in essence a country roads fund. At one stage it was subsidised by an annual payment from the Country Main Roads Fund. With the exception of a small portion of receipts from motor vehicle taxes which, as already explained, may be credited to it, the fund nowadays has no regular source of income, but is dependent mainly upon Parliamentary appropriations. In the early part of the era of extensive highway construction, funds for developmental roads were secured mainly from proceeds of public borrowings. Like the Cumberland and Country Main Roads Funds the Developmental Roads Fund is kept in the Treasury and, subject only to the broad limitations laid down by the Main Roads Act, the programme of expenditure from the fund is determined by the Commissioner for Main Roads.

State and Local Government Authorities in Highway Finance. Before the Department of Main Roads was set up, Local Government ratepayers, aided by government subsidy, were largely responsible for the construction and maintenance of public highways. The passing of the original Main Roads Act gave expression to the need for more direct participation by the State with its wider revenue resources, but it did not destroy the basic principle of dual responsibility of central and local governments. The spirit of the Act was one of co-operation between these authorities. In finance, however, as matters have developed, the place of councils has lessened, while responsibility has tended more and more to devolve upon the central roads authority. As is the tendency throughout the world the policy of the State has been increasingly to use funds provided by motor users to pay the costs of traffic routes and relatively reduce the burden upon Local Government ratepayers. This is accomplished either by adding to the mileage of roads within the various types of main road classifications with which the central authority is concerned or by reducing the contributions towards road expenditure required of councils.

Councils are concerned in the finance of main roads in two ways; firstly, they are obliged to contribute to the funds of the Department of Main Roads; secondly, the department makes

payments towards the costs of roads expenditure incurred by them.

Councils in the County of Cumberland pay each year in accordance with requisitions served on them by the Commissioner for Main Roads. The contribution is fixed at such a rate upon the unimproved capital value of land as the Commissioner may determine; but the rate is to be uniform amongst councils and in no instance is it to exceed one half-penny in the pound. Where land subject to the rate is used for farming purposes a council may reduce a ratepayer's payments by one half and abate the contribution to the Department of Main Roads accordingly.

Councils outside the County of Cumberland are not under statutory obligation to make a general contribution to the funds of the department and no such levy is imposed. They share in the costs of main roads to the extent to which their finances permit and the needs of any road appears to them to demand. Actually the extent of participation is a matter for negotiation and agreement but determinative powers are possessed by the Commissioner and he may require a council to assist in meeting the cost of a particular work.

The Department of Main Roads in turn subsidises works carried out by councils, both in the metropolitan area and in the country, in proportion to the total expenditure. The shift of responsibility for roads from Local Government authorities to the State is apparent in the increasing outlays by the Department since the commencement of the Main Roads Act. While the original Act contemplated a contribution *pari passu* with councils, it became apparent that the capacity of councils to undertake road projects on this basis was not sufficient to cope with the need. Contribution by the Department of Main Roads was then increased to two-thirds of expenditure incurred on certain of the more important main roads and to three-fifths of expenditure on other main roads. The State's liability was again extended with the advent of the more intensive classification of roads into State Highways and Trunk Roads and later, Motorways. Full responsibility for the cost of constructing State Highways and Motorways was vested in the Department of Main Roads. It was also prescribed by the road statute that in any case where a council by arrangement with the Commissioner, carries out any main roads project, the council shall not be required to contribute more than one quarter of the cost in the case of a Trunk Road or one-third in the case of an ordinary Main Road.

Other Road Revenue and Expenditure. Although the Commissioner for Main Roads is the authority for the disbursement of the greater part of the taxes received on account of motor vehicles he is not concerned with their collection. This is a function of the Department of Motor Transport. The taxes, when collected by the latter authority, are paid to the Treasury, where they are taken into a Main Roads Account, which is nothing more than a medium for allocating the receipts to the road funds in the statutory proportion. When transferred to the road funds the money passes to the control of the Department of Main Roads.

This procedure does not apply to taxes paid by owners of privately operated motor services registered under the Transport Act, to special charges in the form of service license fees which private omnibus operators are required to meet, or the equivalent of these imposts paid on behalf of government omnibuses. Receipts from these sources are credited to a Public Vehicles Fund. The whole of the taxes paid by owners of privately operated omnibuses registered under the Transport Act together with payments on behalf of government services and one half of omnibus service license fees are set aside in the Public Vehicles Fund for road purposes in recognition of the extra road wear and tear caused by these vehicles. Amounts so allocated are paid to municipalities and shires and other approved authorities to be spent on the maintenance and reconstruction of roads used by the omnibuses. The remaining half of omnibus service license fees is applied in reduction of the capital debts of State-owned road transport systems, while receipts into the Public Vehicles Fund from taxi cabs and other types of vehicles remain within the control of the Department of Motor Transport for expenditure on traffic facilities.

So also special financial and accounting machinery has been laid down for the disposal of fees for registration and license paid by road motor users. Here the Legislature distinguishes between the authority charged with the administration of road transport and the one concerned with the construction and maintenance of public highways; it directs that those receipts which are in the nature of an administrative charge rather than a tax upon road users shall go primarily towards meeting the expenses of traffic administration and regulation. The fees are collected by the Department of Motor Transport for credit to a Road Transport and Traffic Fund whence they are disbursed on a number of expenditure purposes. These cover a wide range, including police supervision and control of road transport and traffic, administration costs of the Department of Motor Transport and the provision of traffic facilities generally. Any balance

remaining in the Road Transport and Traffic Fund at the close of each finanical year is, by direction of the Transport Act, paid to the credit of the Country Main Roads Fund.

Co-ordination of Highway and Rail Transport

General Considerations. . Apart from the ownership and operation of transport services, governments are interested in the regulation, or as commonly termed the co-ordination of these services, whether State-owned, privately-owned or partly the one and partly the other. Co-ordination is designed primarily to eliminate uneconomic forms of transport and to avoid unnecessary competition between overlapping services. Its processes frequently are financial, as well as of a purely regulatory nature.

In its widest sense, co-ordination extends to all forms of conveyance that affect the transport economy of a country. It is a contentious question because it touches the welfare of particular sections of the community, consisting of those who benefit, whether as operators or users, from the exploitation of the several means of conveyance. Often there is a conflict of interest between these sections. The problem of co-ordination is concerned with the reconciliation of these interests and with the integration of the various forms of competitive conveyance into the general transport organisation.

Of the several types of transport—rail, road, air and waterway—the two lastnamed may be dealt with shortly. Airways transcend State borders. Interstate airways are operated both by the Commonwealth and by private enterprise, and measures for their regulation belong to the Federal sphere. The legislative power of the State is limited to airways operating within its borders—whether this power extends to purely intrastate traffic carried by interstate airways is not free from constitutional doubt. So far as concerns waterways, there is little or no problem involved. Coastal sea traffic touches only the fringe of the transport organisation and, as the country is sparsely served with navigable rivers, transport by inland waterways attracts no attention. Co-ordination legislation by New South Wales is occupied predominantly with the several types of rail and road transport—with measures for their restriction or encouragement according to the particular characteristics of each type and in the manner best suited to the general economic good.

In common with other States and countries where borrowed capital has been invested extensively by governments in the older systems of conveyance, co-ordination measures in the State are prompted as much by financial necessity as by economic considera-

tions. It is a matter of protecting this capital investment against the inroads of private competition. If competition is unrestricted, losses to government-owned systems are inevitable and, as these losses must be borne by public budgets, the view is widely held that governments are entitled to take action to avoid or minimise them. Large sums have been spent in building up rail transport systems to meet the essential needs of the people but, in the past the State, in charging for the use of these services, has never taken more than has been necessary to cover year to year outgo. There are no funds set aside as reserves to provide for scrapping and replacement of existing installations whenever the changing needs of transportation require that this should be done. Moreover, because of the high proportion of fixed charges to which they are subject publicly-owned transport systems cannot readily adapt their finances to the lowered level of earnings brought about by competition; they are in no position, therefore, to counter this competition except by incurring losses or by resorting to large scale writing off of capital, the cost of which must perforce be borne by the general taxpayer.

The natural conditions under which road motor services are able to operate give them several advantages in competing with older transport services. Without having to incur pioneering expenditure, road motor services can exploit areas developed by State-owned railways; they are not under the same obligation of national service as the railways, and therefore can operate at will only over the more profitable routes; being selective rather than common carriers, they can choose the better paying freights. Motor transport traverses roads built and maintained by the community, while rail organisations, having had to face heavy capital outlay in providing their own permanent way, must allow for interest on this capital in their rating schedules. Often, also, competitive road hauliers are owner-operators who, not being subject to wages and hours fixations as are employees in organised industry, are in a position to attract business by under-cutting freights and fares.

The present day principle of governmental control over private transport initiative emerged from the volume of discussion and inquiry directed to the subject both here and abroad several decades ago. The tenor of reports based on these inquiries was that governments are entitled to resort to their sovereign powers in order to bring about a more equitable basis of competition between rival transport systems. It was held, furthermore, that when the public investment is at stake, there is justification should the measures, although avowedly for the purpose of co-ordination, prove to be penal or restrictive upon

the private operator. The general well-being was considered to be the dominant consideration, for the fact had come to be recognised that unrestricted competition, although it might result in individual or sectional benefit, must in the long run lead to a net loss to the community. In Australia, transport co-ordination through governmental agencies has a wide vogue.

Viewed from the national angle, co-ordination is not simply a question of safeguarding the capital structure of government-owned services against the effects of competition by private operators. Just as unrestricted competition could mean loss to public budgets, so also a rigid restraint could, in the net result, spell economic loss to the community and be a hindrance to national progress. Proponents of a system of restrictive control concede road motor conveyance a place in the general transportation plan. They admit that existing services should not be helped by indiscriminate elimination of all other forms of enterprise merely because public budgets are at stake. They recognise, in addition, that any new transportation agency capable of operating within its own resources and likely to make for development at a lower net cost to the community is, *prima facie,* to be encouraged. They would limit road transport, however, to its effective sphere of operations, fostering it where cheaper and restricting it where transport already is served efficiently and to the best economic advantage by existing systems.

The fact is that motor conveyance, by its mobility, convenience and accessibility to areas where railway construction would be difficult and costly, has, despite restrictions, forced its way into the national system of transport. In many ways, it answers an insistent demand for better travelling facilities. The potentialities of road motor transport as a means of developing the country are well recognised, and a system of feeder motor services converging upon rail centres and thus enlarging the area served by existing railways, has largely superseded the construction of country developmental lines. The operation of road feeder services is, in fact, encouraged by the Legislature, which has enacted that any service operating in this manner which cannot be self-supporting may be subsidised from the public funds.

Co-ordination in the State. Legislation for the co-ordination of transport in New South Wales was originally enacted in the Transport Act, 1930, and the State Transport (Co-ordination) Act, 1931. These enactments were the outcome of extensive investigation and inquiry into the problem of transport regulation and control, but the continuing nature of the problem was envisaged by the framers of the legislation in the provisions

included for the constitution of Transport Advisory Committees. The Governor may appoint such a committee to inquire and report upon the transport requirements of the State, the economic advantages of various forms of transport by alternative methods —rail, road or water—the prevention of wasteful competition, the charges and conditions of privately conducted transport undertakings, and any other matters connected with the transport of goods or passengers referred to the committee.

A Transport Advisory Committee was designed to be an investigatory body, without administrative authority. The Department of Motor Transport (subject to the overriding control of the Minister) is the administrative authority in co-ordination matters. The department is vested with wide powers, including the right to allow or disallow any privately operated road transport service.

Every person desiring to operate a commercial motor vehicle is obliged under the State Transport (Co-ordination) Act to apply for a license. In dealing with an application for the carriage of passengers or goods the Department of Motor Transport is to give consideration *inter alia,* to the needs of the area proposed to be served, the avoidance of unnecessary services and the co-ordination of all forms of transport, including rail and tram; according to its view of the desirability or otherwise of the service in the public interest, it may grant or refuse the application. When granting a license, the department can lay down the conditions under which the service is to be operated; it may, for example, fix fares and freights and limit the service either to passengers or goods or to a specified class of goods. In addition to a license fee, the department may at its discretion direct that in respect of any journey a special payment be made by the operator, this payment to be based on the number of passengers, the nature of the goods to be carried, the weight and capacity of the vehicle and the mileage. But if a public motor vehicle is to be operated solely as a feeder service for the railways no such additional payment is to be made. Exemptions from special charges are granted where a vehicle is used for the carriage of goods for journeys up to fifty miles; whenever a vehicle is engaged in the carriage of prescribed types of farm produce to markets this exemption applies irrespective of distance. The Department of Motor Transport may exempt any road motor service from license upon such terms as it thinks fit, and it may from time to time vary or revoke an exemption.

Airways operating within the State jurisdiction are subject to the licensing provisions of the Transport Co-ordination Act in

manner similar to road motor services. The Department of Motor Transport is the co-ordination authority and may fix operating charges based on the carriage of passengers and goods.

All amounts collected as fees for licenses or permits and from special imposts on road or air travel are paid into a State Transport (Co-ordination) Fund kept in the Treasury. The costs of administering co-ordination activities are met from this fund, while the Department of Motor Transport, subject to ministerial approval, may make payments from it in supplementation of income of the Railways and Government Tram and Omnibus Services, in assistance to the Country Main Roads Fund or as subsidy to motor transport operators providing feeder services to railways or tramways. Moneys of the fund may be otherwise used in accordance with Parliamentary appropriations.

The co-ordination measures contained in the Transport Act are ancillary to its main purpose, which is to provide for the operation by the Government of tram and omnibus services. As previously stated, tramways within certain defined areas are operated by the Commissioner for Government Transport exclusively, but this sole right does not extend to omnibuses. These may be operated by private enterprise, subject to control of the co-ordinating authority. The Department of Motor Transport may allow or disallow any service, and, in the former event, it is empowered to impose such conditions relating to fares and other matters as it considers necessary to prevent undue competition or overlapping with existing rail, tram or omnibus services. The right to operate a private omnibus route is signalised by a service license for which a fee is payable. A nominal fee may be fixed, however, for experimental, developmental or unprofitable services.

CHAPTER XVII

PROMOTION OF COMMUNITY HOUSING

STATE SPONSORED HOUSING INSTITUTIONS

The Government and the Housing Problem. The present status of housing in Australian public finance is a development of recent years. Up to a stage that might be said, somewhat arbitrarily, to co-incide with World War I the construction of homes had been regarded largely as the province of private enterprise, and housing finance as an avenue for the investment of private capital. Housing projects figured in only a very small way in the public expenditures.

The years between World Wars I and II witnessed a quickening interest of governments in the problem of housing for low income families and in the attendant evils of slums and over-crowding. This period also saw the development of the system of homes finance by means of public lending institutions, either state owned or sponsored by the State. Useful as they were, these institutions fell far short of solving the housing problem for the masses of the population. They catered for the individual whose financial resources enabled him to bring some degree of self-help into his house owning venture rather than for the very low paid worker or the poor. The need for devising a system of finance to provide for the latter groups remained one of increasing urgency.

Conditions created by World War II hastened the transition to what is now an era of large scale government house constructing and financing activity. At the close of hostilities all the States were confronted with a tremendous housing shortage brought about by the almost entire cessation of building during the preceding six years. At the same time an increase in the number of family units due to the accelerated marriage rate during the war period and a general uplift in the level of prosperity gave an added impetus to the demand for homes.

The position thus created could be regarded as the immediate cause of the State's direct entry into the housing field but the

fundamental cause was the move towards changes in the social order of this period. Housing occupied a prominent place in proposals for post-war social reform. Such proposals were predicated on the thesis of public responsibility for improvement in the standard of housing accommodation, especially amongst lower income groups, and for the provision of a system of housing finance by which homes could be occupied by family units at a cost within their means.

The carrying out of these reforms, coupled with the pressing need to overtake the housing shortage called for financial resources far beyond the capacity of the States. The housing problem was in fact a national one, important in itself, but also in its relationship to other problems affecting the post-war national economy, including the regulation of employment, the orderly disposition of materials in short supply and the control of costs and prices. It therefore attracted the concern of the national government, so that housing became a matter for consultation between Federal and State Governments. A post-war housing organisation was evolved by each State and the Commonwealth in partnership under a system of joint financial responsibility.

Prior to the war two major house financing agencies had been fostered by New South Wales of its own responsibility. These were the Advances for Homes Department of the Government Savings Bank (later the Rural Bank) and Co-operative Building Societies backed by government guarantee. The joint Commonwealth and State organization did not by any means supersede these agencies. On the contrary their lending powers were extended in consonance with the more liberal outlook to housing loans characteristic of the post war period and they remain important elements in the State's present day housing programme.

The State Homes Lending Institution. Two significant trends are discernible in the establishment in 1913 of an Advances for Homes Department of the Government Savings Bank. For one thing the move marked an important stage in the evolution to the present system of large scale homes construction and finance by the Government. In the second place it gave practical expression to the belief that portion of the people's savings accumulated in Savings Banks should be applied towards measures for the welfare of the people, such as housing finance.

This concept of the Savings Bank as a homes financing institution was not readily accepted in the early history of the bank. Long term loans, essential to the average house purchaser,

were held to be a dangerous experiment altogether opposed to the tenets of sound banking investment. Originally the Savings Bank had been expressly debarred by its charter from making loans upon the security of urban lands, but in 1913 an Act was passed providing for the bank's entry into housing finance and in the next year the Advances for Homes Department commenced operations.

The amending Act empowered the bank to make advances to any person for the purpose of enabling him (a) to erect a dwelling-house as a home for himself and his family or to enlarge or complete a dwelling-house after erection or partial erection; (b) to purchase a house as a home for himself and family; or (c) to discharge an existing mortgage or encumbrance on a home. Any person already the owner of a dwelling-house within the State was debarred from obtaining assistance from the bank. The Act directed that all loans be secured by mortgage which, *inter alia,* was to contain covenants for keeping the security in repair and insured in the name of the Bank Commissioners.

Necessarily, business prudence governs the bank's lending arrangements, and capital security is therefore the prime consideration in any loan. At first, the Advances for Homes Department was authorised to advance up to seventy-five per cent. of property valuations, but an amending Act in 1945, increased the permissible margin to eighty per cent., subject to a maximum individual advance of £1,800. A number of statutory prescriptions (now more or less a dead letter under a general banking charter since granted the Commissioners) governed the earlier lending operations of the department. Loans were to be repayable by equal monthly or quarterly instalments over the period set down, which was not to exceed thirty years. But a borrower could at any time pay off the whole amount of a loan or make additional payments in reduction of the repayment term. The interest rate could be fixed by the Commissioners, by whom it could be reduced at will and restored in turn up to the limit fixed in the security. Again, the Commissioners were expressly empowered, if needs be, to increase the rate beyond that stated in the security. But six months notice had to be given in writing and any such increase was permissible once only in any period of three years. Naturally the interest chargeable to borrowers is governed by the bank's own fund raising charges and is such as will provide for all outgoings, including a reserve against loss from borrowers' default.

Capital funds of the Advances for Homes Department were obtained originally by issue of stock to the Savings Bank Depart-

ment and from public loans guaranteed by the State. In 1931, when the Savings Bank Department was taken over by the Commonwealth Bank, savings deposits ceased to be a source of homes finance. The ownership of housing stock held by the Savings Bank Department passed to the Commonwealth Bank under arrangements for its liquidation by a long range plan. Following the Amalgamation Agreement, the Advances for Homes and Rural Bank Departments were formed into a new institution known as the Rural Bank of New South Wales. Under the present constitution of the bank, funds for housing finance are derived from customers' deposits, loans raised from the Commonwealth Bank, private financial institutions and the general public, and reserves accumulated from trading operations.

Co-operative Building Societies. The type of home seeker who might be prompted to approach a Co-operative Building Society for a loan is much the same as would be found amongst borrowers from the State lending institution. Building society finance is most suited, however, to people on low wages or salaries, who are unable to save money for a deposit and whose loan requirements, therefore, are stretched to the utmost margin of security value. Societies are permitted to lend up to one hundred per cent. of this value, an unorthodoxy which could be attributed to that most potent instrument of credit—the government guarantee.

Building societies are a very old institution in housing finance. Not infrequently the societies are formed on proprietary lines as a medium for the investment of private capital. They are then intended to operate permanently in much the same way as a private corporation. Subscribers of the share capital are credited with a regular dividend which may be withdrawn or allowed to remain with the Society in order to build up its capital. Lending resources may also be augmented by deposits from persons with money to invest at short call. Those who supply the capital of Permanent Building Societies usually are not identical with the people who borrow from it. The societies, therefore, are primarily investment ventures rather than co-operative concerns.

Co-operative Building Societies, with which this discussion is concerned, may be founded on permanent lines, but they are mainly of the terminating type, formed by groups of persons, each interested solely in acquiring a home. There are two distinct kinds of terminating societies—one which relies entirely upon members' subscriptions to provide the finance for homes, the other which also borrows from an outside source for this purpose.

In the former case, members' priority to a loan is decided by ballot, and because a society's capacity to provide loanable funds is limited to its flow of income, a considerable number of years must elapse before those least fortunate in the ballots receive their loan. Such a society adds little towards the solution of immediate housing problems. On the other hand, where a society resorts to borrowings to the extent necessary to cater for members' needs as these arise, it thereby becomes an important factor in furnishing sections of the community speedily with homes. It is this type of society which is fostered by the Government, particularly by means of legislation offering guarantee of their borrowings.

A Co-operative Building Society is managed, within the broad framework of the Co-operation Act, in accordance with rules adopted by the Society. Each society is an independent body, competent to determine its own lending conditions, to raise its own loans and generally to pursue its objectives in manner laid down by its rules. Societies are subject to the supervision of the Registrar of Co-operative Societies. The guidance and advice of the Registrar is an important feature in their conduct and usually they follow a model set of rules formulated by him. Although there are differences in financial detail, societies, broadly speaking, function on identical lines.

The period for which a Terminating Building Society is to operate and, consequently, the particular scale of contributions to be followed by members is a matter to be decided by the co-operative body concerned. A society's life is linked with its design, that is to say there is visualised a number of years in which every member will have acquired a home, and have paid for it. Viewed in advance, the period adopted by the members is purely a notional one—in actual result the life of a society may prove to be greater or less than this notional period. All the same the scale of members' contributions once adopted is never changed. Should adverse or favourable factors enter into a society's finances they are absorbed in the contribution plan simply by a prolongation or shortening of the period for which the plan is to operate.

When a person becomes a member of a Co-operative Building Society, he applies for shares equal to the loan he anticipates requiring. He is then entitled to borrow an amount corresponding to the nominal value of his shares. He commences immediately to make a contribution, the amount of which is such that, accumulated at interest, it is calculated to pay up his shares in full by the end of the Society's preconceived life. At the outset

a member's contributions are made at what is known as the "Before Advance" rate and he continues to pay at this rate until he draws a loan. Thereupon he changes to a higher scale of contributions (the After Advance rate), the difference between the two being simply an amount equal to interest on the loan. A member's relationship with a society thus develops a twofold aspect when he receives a loan. He becomes both a subscriber and a borrower. On the one hand his subscriptions are applied, in effect, towards a Sinking Fund aimed at the payment of his share capital. On the other hand, he is required to pay interest on the full amount of his loan. Because share capital and loan are equal, it follows that when the Sinking Fund reaches its objective a member will have accumulated, within the Society, as much money as he has borrowed from it. This is the theoretical stage at which a member's association with a society ceases. He has obtained a home and paid for it.

Since members as a rule, commence contributions to a society from its inception, and upon a common plan (the exceptional case of the member who joins later being met by an adjusted rate of contributions to bring him into line with this plan) it follows that all members complete their contributions in unison, whereupon the Society is terminated. It does not matter at what stage a member takes out his loan. Actually, the process of repayment starts at the time he joins the society, and he is required to pay interest on the loan only from the date he receives it. Should a society rely merely upon its own subscription resources to finance loans, its termination is apt to occur approximately at the end of the time visualised in its constitution. Such a society can fix interest rates at will—it can lend money at the same rate as it allows on members' subscriptions, so that interest income and outgo becomes simply a book-keeping treatment of equal sums. Even when a society augments its funds by borrowing it does not revise the notional interest rates upon which it is founded should it so happen that there is a difference between this rate and the interest which it is required to pay on the borrowings. As already explained, the disparity is dealt with by a lengthening or shortening of the period of members' payments. Similarly economies in administrative costs (such costs being met by special contributions by members), proceeds of fines and forfeitures and other windfall income may reduce a society's life, while loss through a borrower's default could add to it.

Government Assistance to Societies. Strictly speaking building society finance comes within the realm of private rather than public finance. Except that the Government may incur expen-

diture as recommended by a Co-operative Building Advisory Committee in conducting propaganda towards encouraging the formation of societies, and that administrative costs of the Registrar of Co-operative Societies are met from the general revenues, operations of societies do not directly affect the public funds. It is when the credit of the State is pledged on behalf of loans raised by them that Co-operative Building Societies become an important element in the public finances. This is the case in New South Wales.

Government guarantee of their borrowings imparts a vigour to the homes financing activities of the societies. Were they left to their own credit resources to raise outside finance, societies would be only moderately successful, because banks and financial institutions are unwilling to lend to them without some form of guarantee. When this guarantee is forthcoming from the State, lending institutions are freed from concern as to the adequacy of mortgage securities offered by a society and the amounts loaned are not necessarily conditioned to marginal values of the properties included in the security. A society is thus able to secure finance, to the extent of its essential requirements. Furthermore, the fact that borrowings are supported by the credit of the State may have an important effect in cheapening interest rates payable by a society.

The public credit is invoked in one other way in order to further the housing potentialities of building societies. It has already been stated that a member may receive an advance up to one hundred per cent. of security valuation. A society in thus ignoring marginal security requirements would seem to be unheedful of the dictates of prudent business. But the risk under any such loan is only partly carried by a society; portion is borne by the Government. With certain reservations, the Co-operation Act empowers the Government, where a society proposes to advance beyond eighty per cent. of security valuations, to enter into an agreement with the society indemnifying it against any loss which is directly attributable to the fact that the advance exceeded eighty per cent. This special assistance is intended only to help the person seeking a moderately priced home, for the Government indemnity applies only when a hundred per cent. advance is limited to £1,540 or when an advance exceeding eighty per cent. but not exceeding ninety per cent. of security valuation is limited to £1,850. Thus a borrower who obtains an advance up to either of these amounts is freed from the need to furnish a deposit or other form of equity in one instance and in the other is required to bring in only a relatively small sum. When the normal society lending margin of eighty per cent.

is observed, the advance may be extended to £2,500. So far as the indemnified operations of societies are concerned the Co-operation Act originally imposed a limit to the public liability which can be entered into. There is now no such limit save that the Government cannot issue indemnities creating a new contingent liability beyond an amount of £250,000 each quarter.

Community Advancement Societies, another form of homes promotion activity, stem from the co-operative building society idea. Unlike a building society, which is a financing but not a homes constructing authority, housing projects may be one of the objectives of a Community Advancement Society. It may acquire an estate and erect houses thereon, using borrowed funds for this purpose. The society would in turn sell the houses to members on a quasi-rental system under which an equity would be acquired by members after rental payments had been made for a prescribed number of years. As in the case of building societies, Government guarantee of their borrowings is the vital element in Community Advancement Society finance.

Home Building by the State.

The Housing Authority. Aside from the institutions already dealt with, several other projects undertaken by the State were indicative of a developing public housing policy during the past few decades. Contrasted with the large scale activity which characterises the present day scene, these could well be described as of an experimental nature. A Housing Act was first introduced by the State in 1912, and a number of dwellings were erected by the authority set up under the Act. Public borrowings supplied the construction finance. Some of the dwellings were disposed of on long term payment conditions while others were let at weekly rentals. Building projects were continued for only a few years, after which the function of the housing authority was confined to administration of the properties then in being. The Government Housing Office was closed in 1926, whereupon control of rented dwellings and properties subject to contracts of sale and mortgages was transferred to other public instrumentalities. Nevertheless, the Housing Act remained on the statute book.

The Legislature assailed the problem of slum clearance and overcrowding in a Housing Improvement Act passed in 1936. This Act constituted a Housing Improvement Board to manage and control re-housing schemes carried out by the Government and also to encourage the promotion of such schemes by Local Government authorities. In order to assist locally sponsored

re-housing projects, the Act authorised the Government to make advances to councils up to a maximum Treasury outlay of £500,000.

Because of their later merger within the more comprehensive housing and re-housing organisation envisaged in the passing of a new Housing Act of 1941, these earlier measures together with certain other ancillary housing projects initiated by the State prior to that enactment call for only a passing notice at this stage. Apart from the Advances for Homes Department of the Rural Bank and the Co-operative Building Society movement, the Government's housing activities are now centred in the Housing Commission of New South Wales which is the authority set under the 1941 Act. The Housing Commission superseded the older authorities. The Commission is an investigatory, advisory and co-ordinating body. It may acquire land for housing purposes, enter into housing or re-housing projects, dispose of dwellings either outright or by long term payment, and let dwellings under rental conditions. It may manufacture, produce or purchase and supply materials, fittings and appliances to any person or body of persons for building purposes. The Commission is given a wide charter to plan for the varying needs of different population groups, that is to say it may cater for the slum dweller who must be re-housed at a sub-economic rental, for persons in receipt of low incomes who are best suited by a cheap rented house, for those also in the low income groups who are unable to lodge any deposit on a home purchase venture but who may be able to acquire ownership on quasi rental terms and, finally, for those better situated who are in a position to furnish a deposit and to meet payment instalments on normal lines.

Construction costs, administrative and other expenditure of the Commission are financed through a fund kept at the Treasury into which the Commission turns all its receipts, whether capital or revenue. In the preliminary years of operations some construction capital was voted from the State's Consolidated Revenue Fund, while resources of the Commission are also augmented by proceeds from the disposal and rental of dwellings carried over from earlier housing authorities. The fact that the large capital outlay involved in the State's full housing programme calls for extensive recourse to borrowing is recognised by the provisions written by the Legislature into the Housing Act, which empowers the Commission to raise loans by debentures or inscribed stock, with repayment guaranteed by the State.

Joint Commonwealth and State Enterprise. Actually the supply of housing capital is arranged by the Commonwealth

under the joint housing agreement already referred to, whereby the money is to be advanced to the State and in turn made available to the housing authority.

This agreement largely determines the financial structure of that part of the State's homes building and financing organisation which is centred in the Housing Commission. Summarised the agreement presents six main features; (1) the State is to ensure that adequate legislation exists to enable it to control at all times rental housing projects under the agreement including slum clearance and town planning; (2) housing projects are to be undertaken and standards established by the State but the Commonwealth may submit proposals dealing with standards, and the State is to give due consideration to any such proposals; (3) funds are to be provided by the Commonwealth by way of advances; (4) the State accepts responsibility for repayment of the advances; (5) occupiers of houses are to be charged a rent sufficient to cover all out-goings, calculated in manner prescribed, but this rent may be reduced in individual instances according to the financial circumstances of the occupier; and (6) the Commonwealth will make a contribution towards any losses incurred by the State in the administration of housing projects.

It is of interest to observe the delineation of Federal and State responsibility, firstly as to the capital financing of housing ventures, and secondly as to the incidence of losses. The State is to repay Commonwealth advances (together with interest not exceeding the long term Government loan rate existing at the time of each advance) by equal instalments over a period of fifty-three years or such shorter period as might be agreed upon. Capital liability is thus wholly a matter for the State but against this liability, the State holds ownership of house properties. On the other hand, losses incurred by the housing authority are the joint responsibility of Commonwealth and State, the former meeting sixty per cent. and the latter forty per cent. of the losses.

Primarily the losses contemplated in the agreeement are those likely to arise from rental rebates to low income tenants. The basic weekly charge to a tenant is known as the economic rent, that is to say an amount which will enable the housing authority to provide for all outgoings, consisting of amortization of the capital cost with interest in fifty-three years, maintenance, rates and taxes, insurance, administration and allowances for vacancies and defaults. The rent payable by a tenant may be reduced, however, according to his family income. Should this income be equal only to the State's fixed living wage, a tenant is not

required to pay more than one-fifth of it as rent; should income be less than the living wage, the rebate is to be increased by an amount equal to one-fourth of the difference, subject to a minimum payment of eight shillings per week. Correspondingly a tenant whose family income is more than the living wage is required to pay an amount, regulated by the excess, up to the full economic rent. For the purpose of rental calculations, family income is deemed to include the highest individual income within a household, whether received by the tenant or a resident relative, plus a prescribed proportion of the income of any other resident, related or not related to the tenant.

As soon as practicable after the close of each year, the State is to furnish the Commonwealth with a statement setting out the loss incurred by the housing authority in the administration of housing projects. This statement is to be compiled on receipts and payments lines and, certified by the State Auditor-General, it is to be the basis of reimbursement by the Commonwealth of its proportion of the loss incurred by the State on housing operations.

In its emphasis upon the idea of an economic rent, the Commonwealth and State Housing Agreement appears to visualize a system of occupancy under rental tenure rather than disposal by purchase terms. It is within the competence of the Housing Commission, however, to adopt either method with State constructed homes. In fact, the agreement permits of sales of dwellings by the State, but except where the Treasurer of the Commonwealth consents in writing the sale price must not be less than the construction cost. Upon sale of a dwelling, the full purchase price is to be paid by the State to the Commonwealth. Should any loss be incurred on the sale the amount of this loss is to be included in the annual statement of housing receipts and payments furnished by the State to the Commonwealth and it is to be met by each Government in the same proportion as are losses arising from rental operations. The present trend of State policy is towards the outright disposal of homes and a progressively increasing number is passing to private ownership each year.

CHAPTER XVIII

RURAL FINANCE

SCOPE OF RURAL LOANS

Rural Assistance as an Element of Public Finance. Assistance to rural industry occupies a prominent place in Australian public finance. It takes the form of grants and bounties to various sections of primary producers, government guarantee of minimum prices for farm products, measures to foster and develop land settlement, relief to Crown land purchasers and tenants from payment of land dues and loans to farmers and rural institutions. Grants and bounties are designed to provide compensation to the farmer for the low price of his products in world markets and for the disabilities to which he is subject under a highly developed protective tariff. They, together with guarantees of price minima, are national in scope and are mainly the concern of the Federal Government. The remaining forms of assistance are State functions, although it is not unusual for the Commonwealth to participate by means of grants in aid and other cost sharing devices.

Special features of rural industry make it more dependent upon the State for capital than other types of industry. The vagaries of nature give an uncertainty to farming returns; the price which the farmer receives for his product is regulated largely by world conditions beyond the control of the State. Because these hazards make it difficult for the farmer to borrow, he is often unable to obtain the capital necessary for the development of his farm except from the State or from an organization set up by the State for this purpose.

Many farmers are in a position to offer tangible assets as security for loans and thus are able to obtain the financial assistance they need from private sources. Within this class come those who possess freehold title, leaseholders owning valuable farm improvements and deferred instalment purchasers who have acquired a substantial equity in their farms. On the other hand, there are a number without such resources whom the State must

help if it is to foster the settlement and development of agricultural lands.

Frequently a settler on taking up land has little or no capital, although it is at this stage that he most needs it. In the first place, he requires fixed capital in the form of a long term repayment loan. The exigencies of private banking make it necessary that loans be repayable on demand, and private banks therefore cannot afford to tie up their funds in farm purchase or improvement loans repayable over a long term of years. A first requirement upon the State is to set up an organization capable of fulfilling this need.

With the proceeds of a long term loan spent in acquiring a property or on the erection of permanent improvements, a farmer is obliged from time to time to raise current loans for the working of his farm. Should bad seasons be experienced, he requires funds to enable him to carry on until he can restore his position, a process which may take some time, since two good seasons usually are necessary to overcome the effects of one bad season. A further obligation therefore devolves upon the State to provide the farmer with current capital and to assist him with carry-on advances during periods of adversity.

The return from agriculture, viewed as a capital investment, is less than that from other industries. As the farmer's ability to meet interest on the loans invested in his farm is limited by this low rate of return, an abundance of funds which can be loaned at cheap interest is an essential in any plan of agricultural finance. A cardinal difficulty thus arises in the way of governmental assistance in that the funds have to be raised under conditions which will permit of loans at cheap interest and allow for administrative expenses of the lending institution, together with losses from bad debts.

This difficulty of providing the farmer with cheap capital is partly resolved when the State, by virtue of its ownership of the lands, is able to settle Crown tenants at low rentals or to assist purchasers in acquiring ownership by a system of easy payments over a lengthy period. Leases at cheap rentals and purchases at low interest rates are each a form of long term land credit. The State's concern in the farmer does not cease, however, at this stage. Having been settled on the land the farmer has to be kept there. He was encouraged originally to take up land on a small deposit, the possession of capital not

having been a requirement. Unless provided with the funds necessary for the improvement and working of his farm his prospects are uncertain, the land is not put to full productive capacity, and he might be forced eventually to relinquish his farm. Ownership could then pass to a more successful or prosperous farmer, thus contributing to that concentration of land in the hands of a few which the State wishes to avoid.

To assist a farmer the State must be prepared to undertake some of the risk of his enterprise, relying upon such security for repayment as he is in a position to provide. The first element in the security offered by a farmer who obtains a loan for the development of a farm held under leasehold or purchase conditions is his right of tenure. The second is the value which he adds to his farm by his own labour. The third, but not the least, is the personal element, that is to say, the capacity and diligence of the borrower. The State, encouraged by the prospects of a farmer who is possessed of character, is willing to assist him in the improvement of his holding, the security for the loan being based not only on what he brings in, but also on the value added by the improvements acquired from proceeds of the loan.

Rural Assistance Agencies and Methods. Rural finance, when conducted as a business, is divorced from the governmental funds and from the direct administrative control of the government. It is carried on by State lending institutions, such as agricultural banks, leaving the more onerous forms of assistance which a lending institution could not undertake without endangering its solvency, to the public funds. The latter type of assistance may be either by way of grants or loans, and as the need occurs during periods of adversity—the immediate relief of the farmer being the primary consideration—the advances are not made on a strict lender and borrower basis. Security is frequently only nominal. On the other hand, advances from the funds of a State lending institution are made on business lines. The amount of an advance might be extended to the utmost limit in the interests of a farmer, but this limit is always subject to security in one form or another.

A rural lending institution must cater for the needs of a farmer by means of long term loans and short term loans. While long term loans are for farm purchases or the erection of permanent improvements, short term loans are to enable a farmer to acquire stock, purchase seed for crops, provide for harvesting expenses and meet living costs from season to season. The earnings of a farm over a number of years are expected to repay long term loans, but short term loans are usually made on the basis

of repayment from proceeds of the stock or crops on which they were expended.

Long term loans are also known as mortgage loans, since the security consists of a mortgage over the land and fixed assets of the farmer. Where the terms of the loan provide for repayment by an equal sum consisting of principal and interest each year over the period of the loan, it is said to be repayable on the "Credit Foncier" system and the description "Credit Foncier" is sometimes applied to loans of this type.[19] Short term loans are akin to overdrafts in the private banking system, and as they are designed to meet temporary needs, they are repayable on demand. They are not necessarily based on landed security, but might be secured on the stocks, crops or other possessions of the farmer. Given favourable conditions and prospects and a continuing security, short term loans could be extended so as to finance the turnover of a farm from year to year, and thus could become, in effect, long term loans.

A requirement of a rural lending institution engaging in the business of long term loans is that its own finances should be adapted to loans of this nature. They should be free from the danger of sudden call or demand. Where loans are made from capital borrowed by the institution, a substantial proportion of the capital should be payable at long term maturity dates. The accumulated deposits in savings banks provide a source for loans of this nature, and the funds of savings banks are frequently found amalgamated with the business of rural finance. In this manner the small savings of the people are made to play an important part in national production and development. New South Wales, in common with other States and countries, fostered its rural lending institution under the aegis of the State Savings Bank.

The principle of co-operative borrowing by which rural loans are sponsored by Credit Associations is not developed in the State as in other countries. Associations of this nature consist of local bodies of farmers, who pool their security resources for borrowing purposes and supervise repayments, a particular feature being the close knowledge of the personal element which members are able to bring to bear upon applications for loans. The merit of the co-operative borrowing method is in the assistance it offers to the loan-worthy farmer who lacks the individual security to obtain a loan.

---

[19] The description "Credit Foncier" is derived from the name of the French lending institution which introduced the principle of long term loans or "land credits" with the annuity form of amortisation.

It is true that efforts have been made to introduce this form of rural credit in New South Wales. State legislation provides for the setting up of Community Settlement Societies, empowered to make loans to members to enable them to purchase land, effect improvements and carry on farming operations. The Treasurer, if authorised by resolution of both Houses of Parliament, may guarantee the payment of loans raised by the societies, and, with the approval of the Governor, he may indemnify a society against loss from loans granted to members. Co-operative legislation has yet to fructify, however, to this extent. At present, the outlook of the Australian farmer is not favourable to co-operative borrowing, and perhaps the reason for the slow growth of the movement is to be found also in the special facilities for obtaining land which the State has been able to provide for its citizens by virtue of its original ownership of the lands.

Rural Assistance from the Public Funds.

Origin and Development. Up to the close of the previous century, rural industry in New South Wales was more or less financially self-contained. It was founded largely on pastoral settlement with agriculture confined to the better class lands and more reliable rainfall areas and its vicissitudes gave rise to no great claim for assistance so far as the public funds were concerned.

An increased demand for land for agricultural pursuits particularly wheat growing, arose in the early part of the present century. Rising grain prices which followed World War I encouraged the opening up of new rural areas. Lands were subdivided for wheat growing beyond the limits of safe agricultural settlement, with disastrous results to the growers, many of whom had to turn to the Government for assistance. Much of the direct financial relief granted to wheat growers in New South Wales in the succeeding years was attributable to efforts by the State to maintain agricultural settlement of these sub-marginal lands.

Linked with low rainfall area farmers in the scheme of public assistance as it developed in the past fifty years, were those occupying poorer class lands, the struggling Crown lands purchaser and tenant and the holders of inadequate maintenance area farms. In these cases, farms invariably were burdened with debt and the occupants had no reserves to draw upon in bad seasons. Nor did they possess marginal resources sufficient to establish farm equities upon which developmental loans might be sought from rural lending institutions. The problem of the less securely situated farmer varies over the years with seasonal fluctuations and with changes in world prices but it is one

that creates a recurring demand for assistance in some way or another from the public funds.

Until comparatively recent times this assistance consisted mainly of advances designed to provide for current expenses or to carry farmers through drought periods. From these beginnings wider schemes of amelioration have emerged, and to-day assistance takes many forms. The necessitous farmer is given relief from interest and rental charges due to the Crown; the capital value of land tenures is reduced by re-appraisement so that a lower rental charge or purchase price is payable for a farm, freight concessions granted by the railways are borne in part by the general revenues and loans made by financial institutions are State guaranteed. In more recent years, measures for relief from private debts and for farm reconstructions involving extensive outlays from public funds have been enacted by the Government.

Drought conditions were responsible for the first resort to the advances form of farm relief by New South Wales. In 1899, an Advances to Settlers Board was set up to administer loans made to the developing agricultural and dairying industries so that they might be tided through the adverse season then being experienced. Loans were granted to farmers in necessitous circumstances and at first were limited to £200 repayable with interest in ten years. Later the scope of the governing Act was widened to permit of loans for any approved purpose, up to £500, repayable within thirty-one years. This was the commencement of the State rural lending activity which eventually developed into the Rural Bank of New South Wales. In 1907, the functions of the Advances to Settlers Board were taken over by the Government Savings Bank and the limit of advances was raised to £2,000. A Rural Bank Department of the Government Savings Bank was established in 1920 to carry on the work. Thus the Advances to Settlers activity, which was never intended to be conducted on strict commercial lines, but actually was introduced as a relief measure, became in course of time part of the State's business enterprise in rural finance.

There still remained the need for providing aid for the settler whose principal claim for assistance was based on the fact that he was in necessitous circumstances. Advances from the public funds were continued to this type of farmer, and in 1919, a Rural Industries Board was established to administer the advances. The Board was directed to take over, consolidate and collect advances made during preceding years for various purposes, such as drought relief, the purchase of seed wheat and for land

clearing, and it was empowered to make further advances for relief in necessitous cases. The Board had no statutory constitution. It was dissolved in 1923, but its functions were continued by a Rural Industries Branch within the Ministry of Agriculture.

Assistance through this channel was essentially a form of short term credit, confined originally to wheat farmers but extended later to dairy farmers, small graziers and generally to persons engaged in rural industry who were unable to obtain assistance from the normal lending sources. Wherever practicable, mortgage security was taken, but as many of the applicants lacked tangible assets, loans frequently were secured by crop liens or purely personal backing in the form of Promissory Notes.

Other assistance more or less of a specialised nature entered into the public finances as the needs of rural industry increased. Legislation for protecting the pastures of the State embodied a scheme of advances whereby landholders could purchase wire netting for rabbit proof fencing. Financed from proceeds of borrowings, the State's wire netting advances fund operates on the circulating principle, while interest in borrower's repayments is credited to the general revenues, from whence charges on the fund capital are met. Another form of farm assistance in the sinking of shallow bores was inaugurated through the State's water conservation and irrigation authority. The State provides the mechanical equipment and technicians for bore sinking, and the farmer is required to meet the cost of work carried out on his property, as certified by the water authority, by interest bearing instalments over a number of years. Government assistance to landholders in obtaining a farm water supply was later extended so that the authority could make advances for expenditure on water supply works of a general character designed for domestic stock or irrigation purposes. The scope of rural assistance of a specialist nature was further widened when the Government undertook the financing of farm mechanisation projects carried out on a community basis through rural co-operative bodies.

Expansion in the scope of rural assistance from the public expenditures was accompanied by a similar development in relief measures affecting the public receipts. Perhaps the farmer could be deemed fortunate in the fact that many of the commitments which comprised his debt load frequently arose from his status as a Crown land purchaser or tenant, since the State was thus in a position to extend to him relief which private financial institutions could not afford. Parliament by a series of enactments vested the Minister for Lands with power to fund, postpone, or waive arrears of indebtedness. To counter the effect of the fall

in the price of primary products upon land values during the world depression, Crown land purchasers and tenants were enabled to apply for re-appraisement of farm capital values or annual rentals, and values, upon review by local Land Boards, were reduced so that charges were commensurate with the productive capacity of farms. An additional relief measure empowered the Minister for Lands, upon the recommendation of a Land Board, to waive or postpone the payment of interest or rent in cases where farmers are affected by floods or other such seasonal adversity.

Administrative and Financial Organisation. A feature of the increase in administrative work which naturally accompanied the expansion in the scope of rural assistance, was the tendency for the control of the different forms of assistance to spread throughout various Government departments and bodies. As a result there was overlapping, particularly where an individual farmer received advances from one or more of the several lending authorities. The existence of a number of collecting departments added to the cost of collection, and moreover, in some cases, departments dealing with the same farmer were competing with each other in taking securities for advances or in obtaining repayments.

To co-ordinate the several lending activities of the State a Government Agency Department was added to the State Rural Bank in 1934. The Bank, having already made mortgage loans to a number of farmers who also had received supplementary loans through one or other channel of direct governmental assistance, was in a position with its existing lending and collecting machinery to consolidate the administration of the different types of advances. Commissioners of the Bank acting through the Government Agency Department were constituted the rural lending authority. A wide range of assistance is administered by the Commissioners, whether for the erection of permanent improvements, the purchase of stock and equipment, seed wheat, cropping, maintenance and carry on expenses, or irrigation farming. The Commissioners are empowered to make the advances at their discretion and upon such security as they think fit. They are also responsible for the collection of repayments.

Funds for advances are made available by the Treasury or are derived from current debt repayments. When dealing with any such repayments the Commissioners are not obliged to follow the terms of the Loan Act by which the money was originally provided by Parliament, that is, they need not apply them for purposes prescribed by the original Act, but, on the

contrary, repayments may be used for any form of new advance within the authority of the Government Agency Department. In this manner funds allocated at different times by separate votes of the Legislature for assisting sectional activities of rural industry are mobilised in a single lending agency.

In addition to the authority to make advances and collect repayments of the nature already noted, the Government Agency Department of the Bank is charged with the collection of other forms of rural indebtedness such as rents, water charges, and mortgage instalments from settlers in Irrigation Areas and Districts, and shallow bore advances. Amounts collected as repayments of principal from all sources remain part of the Government Agency Department capital pool. On the other hand, receipts of a revenue nature, such as interest on advances, farm rents, and charges for water, are required by the State in aid of interest and charges on the loans from which funds for the Government Agency Department were provided, and also to help meet various expenses, such as maintenance and upkeep of irrigation areas. Revenue receipts are paid, therefore, to the Treasury where they are taken into the general revenues or into working accounts, according to the authority appropriate to each type of receipt.

Rural assistance in its several forms calls for the upkeep of a large administrative organisation while its overall cost gives it a substantial weight in State financial outlay. In its budget impact it is a combination of revenue and expenditure influences, since so much of the cost is based on the one hand on concessional reductions of Crown land charges and so much on the other hand is related to actual spendings. While expenditures are apparent from year to year in the State accounts, the budget does not present any measurement of the cost of relief measures affecting the public revenues.

At one stage the State, pressed with the problem of assisting the necessitous farmer, resorted to indirect taxation in order to obtain funds for this purpose. By a Flour Acquisition Act flour held by millers was compulsorily acquired by the Government and resold to them at a higher price. Surpluses on resales were set aside in a special account to be used in providing farm relief. Thus the cost of rural assistance was intended to be spread by an easy method of administration amongst the consumers of the principal product of agricultural industry. The taxation measure, being held to be beyond the legislative power of the State,[20] was abandoned after a short period of operation and the State was left to its normal revenue or borrowing resources.

[20] 56 C.L.R. 390.

The burden of rural finance falls in part upon the revenue budget and in part upon the loan fund. Allocations are not governed by strict rule, but so far as concerns repayable advances, the practice of resorting to the loan fund has predominated. Nevertheless, experience shows that advances of the kind which the State has been obliged to undertake could not invariably be regarded as a secure form of capital investment. Often the Government is committed to loss from borrowers' default, and indeed, some considerable portion of State deadweight debt is traceable to the writing off of irrecoverable rural advances.

Underlying this treatment of advances as a capital investment is the broad economic objective that the farmer will be helped to a position of self sufficiency. Unfortunately, this is an ideal not always realised. In many instances the well intentioned efforts of the State have proved only palliatives, and farmers, despite assistance from year to year have reached no nearer financial independence than when they first occupied their farms. Confronted with heavy losses of borrowed capital and facing the prospect of a continued drain upon the public funds in sustaining uneconomic rural settlement, the State was at one stage forced to a drastic review of the position and possibilities of many farms. From this review there emerged a new phase of public assistance to rural industry, characterised by efforts under governmental auspices, first to bring about permanent mitigation of debt loads where these were considered to be excessive, and next to secure the reconstruction of uneconomic farms.

Reconstruction Era in Farm Finance.

Farmers' Relief Act. The farm reconstruction movement commenced during the world depression of two decades ago. The movement was the culmination of a long period of ineffective assistance by the State to debt harassed farmers but undoubtedly the desperate plight reached by many of them in the depression years brought it to the fore. Several stages of rural depression finance marked the development of the farm reconstruction movement. First the State took control of the affairs of a large number of farmers who were unable to carry on; next it sponsored debt compositions with creditors on their behalf; finally it arranged schemes of compensation upon voluntary farm vacation by those whose position was deemed to be beyond rehabilitation. Introduced originally by a Farmers' Relief Act of 1933, this new approach to the problem of State assistance to rural industry was given effect by a series of subsequent enactments, including a Rural Reconstruction Act of 1939.

The Farmers' Relief Act as originally passed was a moratorium measure freeing those farmers who elected to come under it from the immediate pressure of private debts. At a later stage its provisions were made applicable only to cases where it appeared after investigation that the farmer had a reasonable prospect of success if the benefits of the Act were applied to him. Administration was vested in a Farmers' Relief Board which was empowered to appoint supervisors over farmers' affairs. Protection under the Act followed the issue of a Stay Order granted by the Board on a farmer's application, the issue of a Stay Order having the effect of prohibiting action by creditors and of regulating the distribution of farm income in accordance with fixed priorities. As it was to be expected that the same circumstances which compelled farmers to seek the protection of the Act would prevent them obtaining outside finance in order to exploit the productive capacity of their farms, the Board was authorised to make advances from the public funds for the purpose.

Although the Farmers' Relief Act afforded some respite to the debt burdened farmer it did not provide a permanent solution of his difficulties. It was never intended to be other than a temporary measure, but was designed rather to enable farmers to remain on their farms and retain possession of their assets until world conditions improved. Circumstances dictated otherwise. The period fixed by the original Act for the operation of a Stay Order was extended by later legislation as it became apparent that the lifting of Stay Orders would place farmers back where they were before the Act came into existence. The mass of capital debt to which they were subject was their real dilemma. This dilemma could not be resolved by the abrogation for an indefinite period of the rights of private creditors. Only by permanent alleviation of the burden of that portion of debt which was calculated to be beyond the productive capacity of his farm, could the farmer hope for rehabilitation.

Debts Adjustment and Reconstruction. The farm debt problem led to the enactment of legislation providing for voluntary compositions between those farmers whose financial position was considered not to be beyond recovery, and their creditors. Compositions, sponsored by the Farmers' Relief Board, were entered into after a comprehensive survey of the financial position and individual capacity of each farmer, including a review of the income-earning possibilities of his farm under average conditions, both seasonal and marketing. The extent to which debts were to be compounded in each case was determined by the Board on the basis of the commitments it was considered the farmer

could meet after providing for his maintenance and the working expenses of his farm. Creditors were asked to accept the composition arrangement.

Behind the debts adjustment plan stood the Commonwealth. The plan was devised in conference between the States and the Commonwealth; it was financed by the Federal Government and its ramifications were nation wide. Federal grants were made available to the States under legislation of the Commonwealth Parliament by which details of adjustment schemes were left to the States. But it was a condition of the grants that an advance was not to be made for the purpose of a composition unless, in the opinion of the State authority administering the scheme, some discharge of a farmer's indebtedness was necessary to enable him to carry on, and a farmer in obtaining this discharge would have reasonable prospect of successs.

Terms of repayment of advances made for the purpose of a composition and the rate of interest on the advances were fixed by the Farmers' Relief Board. Broadly, the effect of the scheme upon the affairs of a farmer was that the many amounts owing to private creditors were consolidated into a single debt due to the Board, usually less than the previous aggregate and repayable on easy conditions, with a low rate of interest. Repayments received by the Board could be used again to finance new compositions. The intention implicit in the Federal legislation was that proceeds of the grant should operate as a circulating fund in the hands of the State to be used permanently in the interests of farm debts adjustments.

At first limited to farmers who were operating under Stay Orders, the scheme of debts adjustment was later extended to others who were desirous of participating in the benefits of the scheme. To secure immunity from the pressure of debts while the affairs of applicants outside the Farmers' Relief Act were being investigated, the Board was empowered to issue Protection Orders preventing creditors' proceedings. The scope of the measure was extended also so that the Board could proceed with a composition on behalf of a farmer without obtaining the consent of all his creditors. By this means an element of compulsion was introduced into what hitherto had been a matter of voluntary arrangement, and the objections of the few unwilling creditors were subordinated to the general welfare of the many, debtors and creditors alike.

In numerous cases where a farmer entered into an adjustment of his debts the Crown was the principal creditor, either for land in course of purchase, rental charges or advances made from the

public funds. The State at an earlier stage had given a lead to private creditors by re-appraising farm values, whereby Crown payments were reduced to levels commensurate with the productive capacity of farms. It was found nevertheless that arrears of Crown dues, together with advances from the public funds which frequently figured amongst the liabilities of farmers, were impeding adjustments, as amounts owing by a farmer to the State were excluded by Commonwealth legislation from distributions of debts adjustment moneys. The Board was granted wide powers to waive or reduce various classes of debts due to the Crown so that an adjustment could proceed.

Removal of a Stay Order did not necessarily follow the completion of a debts adjustment. The Order was continued as a means of supervision by the Board until the need for this supervision no longer existed. It remained within the power of the Board during the further term of the Stay Order to make advances from the public funds to assist in the farmer's rehabilitation.

Signalising the new turn in the public outlook to the farm relief problem the Farmers' Relief Board became known by legislation of 1939 as the Rural Reconstruction Board. The term "rural reconstruction" connotes a wide range of activity, of which farm debts adjustments is a part, but it is specially used to describe the measures undertaken by the State to grapple with the problem presented by the uneconomic farm. It had reference particularly to defined marginal wheat areas, that is to say, lands subdivided into areas intended for and principally used for wheat growing but which owing to inadequate rainfall and/or unsuitable land have proved unfitted for wheat as a major operation. The scheme of reconstruction involved the building up of marginal area farms into larger holdings suitable for grazing and the payment of compensation to those farmers who vacated their holdings as part of the scheme. Following the determination of lands within the marginal wheat area definition, the Rural Reconstruction Board was empowered to grant advances to surviving farmers and to pay the prescribed compensation to those displaced. As in the case of debts adjustments, funds for reconstruction advances were made available by the Commonwealth, to be disbursed by the State authority.

Most marginal area holdings consisted of Crown lands which had been mortgaged to financial institutions. The holders moreover were burdened with private debts. Various interests, frequently of a conflicting nature, had therefore to be settled in the course of reconstruction. This involved different forms of

assistance from public funds of both the Commonwealth and the State in providing for the discharge of mortgages, in the reduction by re-appraisement of the capital debts of Crown holdings, in arranging debts adjustments with private creditors and in providing finance to enable the surviving farmers to carry on.

The State's Rural Lending Authority.

Constitution of the Rural Bank. Throughout the world, rural finance is linked with the business of banking, and in many countries banks, both private and State controlled, have been set up specially to deal in this form of finance. New South Wales has only recently ventured into the field of general banking occupied by the trading banks and the Commonwealth Bank,[1] but in earlier years the businesss of savings banking grew and prospered under its control. It was not surprising then that the State, following the trend of other countries, should have turned to the large volume of savings bank deposits as a means of financing rural industry.

That savings bank deposits were intended to occupy a prominent place in rural finance is apparent from the discussions which marked the setting up of the Government Savings Bank in 1906. Indeed, the growth of rural banking in the State is linked with the history of the Savings Bank. In the earliest days of the Bank, advances were made to farmers, and, as already noted an Advances to Settlers activity set up by the Government was merged into the administration of the Bank. When a Rural Bank Department was established in 1920 to deal specially in rural finance, the initial capital of the new department was provided by investment of a substantial portion of savings deposits.

The lending charter granted to the Bank's Commissioners covered a wide field of rural activity. Mortgage loans repayable at the end of fixed terms, or by amortisation instalments, could be made upon the security of freehold land or of any holding under the Crown Lands Acts, while overdrafts, payable on demand, could be granted to agricultural, pastoral, rural or primary producers, and to persons carrying on industries immediately associated with rural pursuits, on the security of land, crops, wool, stock, plant or machinery, personal security, guarantees by co-operative credit societies or rural credit associations, promissory notes, bills of exchange or any other security approved by the Commissioners.

---

[1] The Rural Bank was empowered by the Rural Bank of New South Wales (General Banking) Act, 1947, to conduct all classes of general banking business.

Supplementing the supply of rural lending funds derived from savings deposits, the Rural Bank Department was authorised to accept current accounts and fixed deposits, and to raise public loans by the issue of debentures or inscribed stock, the repayment of all moneys thus received being guaranteed by the State.

When the Government Savings Bank was amalgamated with the Commonwealth Bank under the Commonwealth and State Banks Amalgamation Act of 1931, the Rural Bank Department remained with the State. Advances made from savings deposits to the Rural Bank Department, for which inscribed stock had been issued to the Savings Bank Department, together with the liability for customers' deposits, both fixed and current, were taken over by the Commonwealth Bank. The capital debt of the newly-constituted department was consolidated into inscribed stock payable to the Commonwealth Bank by annual instalments over a number of years.

The State institution, known as the Rural Bank of New South Wales, which emerged after the Savings Bank amalgamation, was divided into three sections, of which two, the Rural Bank Department and the Government Agency Department, were devoted to rural finance.[2] When the Commissioners were empowered in 1947 to conduct all classes of general banking, the Government Agency Department retained its distinctive name and constitution, but all remaining activities of the Rural Bank were merged in a single department known as the General Bank Department. Restraints on the bank's rural lending charter were removed but its authorities to obtain finance for rural loans remained.

Present-day capital consists of stock issued to the Commonwealth Bank under the Amalgamation Agreement, new loans from that bank, and public issues. Other loanable funds are derived from customers' current accounts and fixed deposits. Annual profits are set aside in general reserve, the moneys of which are invested outside the business.

Although the large volume of savings bank deposits is no longer available to the State in the service of rural finance, a singular benefit remains from what was virtually the sale of the goodwill attaching to the Government Savings Bank. The Amalgamation Agreement requires the Commonwealth Bank to keep a separate account of the whole of its savings bank business in New South Wales, the resultant profit or loss after each half-yearly balance is struck, to be equally divided between or borne by the Commonwealth Bank and the Rural Bank. In accordance

2 The Advances for Homes Department was the third of these divisions.

with State legislation, the profits paid to the Rural Bank are credited to Special Reserve, and the funds received in this manner go to swell the resources of the bank.

Crown Land Tenures in the Bank Lending System. The power to make loans, either for fixed periods or by way of overdraft, enables the Bank to cater for the farmer's need for both long term and short term finance. Under the restricted rural lending charter to which it had been subject before the introduction of general banking, fixed term loans could not be made for less than £50 nor more than £2,000, and were not to exceed two-thirds of the value of the security. Nor was any such loan to be granted unless the security was in the form of a first mortgage. The Bank, however, was not debarred from making a loan upon land already charged for certain types of debts, such as improvements owned by the Crown or wire netting advances, provided that the amount of the loan, together with the existing charges, did not exceed the prescribed two-thirds of the valuation. With the introduction of wider banking powers in 1947 these restraints were removed, leaving the Commissioners in a position to pursue a policy of lending for rural purposes in accordance with general banking practice.

Atlhough the Bank is empowered to make loans upon the security of both freehold lands and Crown tenures, it derives a particular utility from the assistance it provides to farmers who occupy their farms either as Crown tenants or deferred payment purchasers. Where a borrower's title is freehold, the Bank, as the holder of the first mortgage, may pursue its remedy untrammelled by any prior interests should a borrower default. On the other hand, loans to occupiers of Crown lands are subject to the prior claim of the Crown as the owner of the land, and the Crown possesses the right of forfeiture in the event of a land purchaser or leaseholder not meeting his payments. As advances upon Crown land securities could be a source of loss by reason of the exercise of this right, it would be unsound for the Rural Bank, actuated as it must be by considerations of business prudence, to embark on an extensive scale of lending to land tenants or purchasers unless special provision existed for the protection of its interest. Yet this is the type of farmer in the greatest need of the form of assistance which the Bank as the State lending institution is set up to provide. Because much of the Bank's value in the service of rural development would be lost were it not encouraged to lend to occupiers of Crown lands, special measures have been enacted to encourage it to do so.

The Rural Bank statute defines the respective rights of the Crown as owner and the Bank as lender upon the forfeiture of

a holding upon which the Bank has made an advance. On forfeiture, the interest of the occupier ceases and the land normally reverts to the Crown, but the statute, while allowing the forfeiture to proceed, lays down special provision for the protection of the bank loan. It provides that where land in respect of which any loan has been made by the Rural Bank is forfeited, the land instead of reverting to the Crown, is to vest in the Bank for a period of two years from the date of forfeiture, or for such further period as the Minister for Lands (the Water Conservation and Irrigation Commission if the land is within an Irrigation Area) may allow. The Bank then becomes statutory owner of the land and may sell it; but the Minister for Lands or the Water Conservation and Irrigation Commission may elect, within a prescribed period, to pay off the Bank's loan, in which event the normal procedure following forfeiture is followed by the Crown, the Bank no longer having any interest. Should there be no such election, however, the land remains vested in the Bank for the purpose of a sale.

Upon sale by the Bank the new purchaser assumes the liability for future rental payments to the Crown or for the balance of purchase money which had not fallen due at the date of forfeiture, but he is not liable for arrears of payments due by the previous holder. The Bank is required to meet such arrears up to one year's rental or purchase instalment before applying the proceeds of the sale in repayment of its own loan. Should there be any further proceeds of the sale after the Bank's loan is satisfied, the proceeds are to be accounted for in prescribed order; firstly, in payment of any additional arrears of rental or purchase instalment due by the previous holder at the date of forfeiture, secondly by payment into the Treasury to the credit of the Consolidated Revenue Fund.

The effect of these provisions is to give the Bank priority over the proceeds of a sale, since it is obliged to account only for arrears of Crown charges up to one year's rent or instalment. When the sale does not yield any further surplus after repayment of the bank loan the Crown is obliged to forgo arrears and the public revenues are thereby the loser. It would be competent for the Bank, in the case of a borrower's default, to pursue its remedies as mortgagee instead of invoking the special provisions of the Bank Act, but in this event all outstanding Crown charges would have to be met as a first charge on the proceeds of a sale. The Bank, however, may rest upon the machinery of forfeiture as in doing so it is able to proceed on more favourable terms. By virtue of the protection thus afforded by the Legislature the Bank is encouraged to undertake a wider range of rural finance than might otherwise be the case.

Chapter XIX

CLOSER SETTLEMENT

Administration and Finance.

Acquisition of Land. The term Closer Settlement is commonly associated with the means by which the State aims at the breaking up of large estates into smaller holdings, so as to bring about the more intensive settlement and cultivation of agricultural lands. This objective has been sought at different stages and with varying degrees of success, by taxation of large estates, the encouragement of voluntary disposal and predominantly by purchase and resumption. The central problem is one of finance and the employment of the capital resources of the State is necessary to give the work of closer settlement any worth-while impetus. The subject thus becomes a distinct section of State public finance.

Closer settlement in its existing form commenced at the beginning of the present century. By that time the best lands in the territory had been alienated or were in course of alienation. Large holdings were given over to pastoral occupation to the exclusion of agriculture, upon which the extension of farm settlement depended. While land concentrated in the ownership of a few was greatly in excess of that necessary for their support many would-be settlers could not obtain land.

Taxation of large estates was first looked to as a means of remedying this position. It was contended that the pressure of steeply graded rates of taxation would compel the relinquishment of large holdings. A Land Tax passed in 1895, was designed partly for this purpose. The experiment did not succeed in bringing about any extensive breaking down of estates, although a similar measure introduced later by the Commonwealth was claimed to have been effective both as a means of reducing the size of estates and discouraging their accumulation.

The early taxation measures not having proved successful it was recognised that the demand for land could best be satisfied by the purchase and subdivision of private estates. The first

Closer Settlement Act was passed in 1901. It relied upon the system of voluntary disposal and for that reason was ineffective. The 1901 Act remained in existence until 1904, when it was repealed and replaced by a new Act, this being the forerunner of the considerable volume of legislation by which the administration of Closer Settlement is now governed. The Act of 1904 made provision for the first time for resumptions.

Two principles were introduced at the outset into Closer Settlement legislation and have survived—firstly, the machinery for examining and reporting upon proposals for the acquisition of estates was vested in a board; secondly, the decision as to the acquisition of any estate was left to Parliament. This latter requirement operates without regard to the amount involved and places the purchase of estates in a unique position amongst government contracts. It was said at the time of its enactment that in matters of this kind affecting to such an enormous extent the well being of the community it is necessary to have the sanction of the highest tribunal in the land.

The function of a Closer Settlement Advisory Board, as it is now termed, is to report to the Minister for Lands whether any land specified by the Minister is suitable to be acquired for closer settlement. The board is to report upon the estimated value of the land and the improvements, the price at which the board recommends its acquisition and the method of arriving at the price, the use to which the land may be put, its capacity for carrying stock for agriculture or other profitable use, the number of farms into which it could be suitably subdivided, the possibilities for irrigating, and other such particulars as the Minister requires.

When the board reports that any land is suitable for closer settlement the Governor may purchase it by agreement with the owner, or failing such agreement, the land may be resumed, this right of resumption applying only where the value of the land, exclusive of improvements, exceeds fourteen thousand pounds. Before resuming any land the Governor by proclamation notifies that he proposes to consider the advisableness of acquiring the land for closer settlement, and no disposition of the land can operate to defeat the power to resume it up to twelve months after the date of this notification. The owner of an estate is thus prevented from dealing with it in a manner which might circumvent the provisions of the Closer Settlement Act during the period in which acquisition is under consideration.

Every purchase or resumption is to be approved by resolution of both Houses of Parliament, and to assist in its deliberations, Parliament is furnished with the detailed report of the Closer Settlement Advisory Board. If an owner is not satisfied with the price at which it is proposed to resume an estate he may appeal to the Land and Valuation Court.[3]

Principle of Betterment. For the State the process of repurchase of lands so lightly disposed of in earlier times is a painful one. The price paid to the vendors is vastly in excess of what was originally obtained for the lands. Much of this difference in value is due to the labour of the owner and the investment of private capital, but much again could be attributed to that enhancement which comes with the general growth and development of the country. The expenditure of capital borrowed by the State upon the construction of public works plays an important part in bringing about this increase.

As any attempt to reserve to the Crown the increment in land values due to the general national enhancement would be difficult and far reaching in its effects, Closer Settlement legislation has ignored this form of betterment when dealing with the prices to be paid for acquired lands. Nevertheless the legislation has aimed at controlling increases in prices due to local betterment from railway extensions and irrigation works contiguous to estates, as the effect of these is deemed to be capable of assessment and adjustment.

This principle of local betterment was first laid down by Parliament in 1907, when it directed that increases in value from new railway lines were to be excluded from the purchase price of estates. At a later stage, the principle was extended to works for the conservation and supply of water.

Within twelve months after the passing of any Act authorising the construction of a line of railway or a work for the conservation and supply of water, the Governor may notify a list of estates within a prescribed distance of the railway or the boundaries of the lands to which an added value is deemed to be given by the water supply or conservation work. The notification remains in force for twelve months, during which time no disposition by the owner can defeat the power of closer settlement resumption. Whilst the notification remains in force the Governor may proclaim that he proposes considering the advisableness of acquiring the lands for closer settlement, and when any such

[3] But note the statutory limitation upon the amount of compensation payable for estates acquired for War Service Land Settlement after World War II. (Vide page 282).

land is purchased or resumed the price or compensation is to exclude any enhancement in value due to the construction or proposed construction of the railway or water work.

It will be seen that the Crown reserves to itself, not only the added value from the construction of a railway line or water work, but also from a proposed construction. "Added value" as thus referred to might not be real, since the proposed construction of a work does not create any betterment, but merely adds to the market valuation of the land. The real increase occurs when the benefits of the cheaper rail communication or the water supply become available. In fixing a price for sale purposes, a holder would naturally take into consideration the prospective benefits from a proposed work, and the purpose of the legislation is to protect the State against any such anticipated increase in value which might otherwise enter into the purchase price.

Disposal of Closer Settlement Lands. New South Wales, at the outset, adopted the system of outright disposal of closer settlement lands. The Legislature aimed at settlement by home maintenance units, and estates were subdivided accordingly, a home maintenance area being defined as an area which, when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family. The unit of disposal is known as a Settlement Purchase.

Good faith is an essential in any application for a Settlement Purchase. The sole object should be that the land is desired for the use and benefit of the applicant, and a person already possessing land sufficient for his subsistence cannot apply. As evidence of good faith, the law requires that the holder of a purchase reside on the holding for five years unless the local Land Board suspends or modifies this condition. Where it appears that a Closer Settlement farm is not held or used for the exclusive benefit of a holder, it is liable to be forfeited to the Crown, together with all moneys paid in respect of it.

A Settlement Purchase cannot be transferred without the consent of the Minister, and transferees are subject to the same qualifications as original applicants. If the land comprised in a purchase is unimproved, the purchaser is required to effect improvements to ten per cent. of the capital value within two years from the commencement of the purchase and to an additional fifteen per cent. within five years. The obligation upon the settler is reduced, however, to the extent of the value of any improvements upon the land at the date of his application.

Farms into which an estate is subdivided are each given a capital value based on the price paid for the land, and the additional cost of preparing it for settlement. The capital value of a farm becomes its purchase price. An applicant is required to lodge a deposit which is applied in reduction of the purchase liability, and thereafter an annual payment has to be made until completion of the purchase. Normally, this payment consists of principal and interest calculated as a percentage of capital value, broadly one point in excess of the fixed interest rate. But the trend of Closer Settlement legislation has been to liberalise the payment terms during the early period of occupancy. For the first five years, the settler is required to pay only interest, and this at low rates, increasing by half a point annually until the rate attaching to the purchase is reached. Thereafter, the full instalment is payable. Under these conditions, it takes approximately forty-two years from the commencement of occupation to discharge a Settlement Purchase.

The Minister for Lands is empowered to grant concessions to enable a Settlement Purchaser to overcome financial difficulties during the purchase period. He may postpone the payment of instalments, or direct that interest only be paid in lieu of an instalment, or allow interest for any year to remain unpaid until the end of the term of purchase. In certain cases where interest has previously been postponed until the term end, the Minister may waive its payment altogether. Naturally, concessions prolong the period required to complete a purchase.

A holder's title to a Settlement Purchase commences from the application date. Upon compliance with the requirements to effect improvements and of residence upon the holding, the holder is given a certificate of conformity. His security in the land is then advanced a further stage. After payment of the final instalment, a Crown grant is issued and the process of alienation is complete. The purchaser then owns the freehold of his farm.

Something like three million acres of closer settlement lands were taken up by Settlement Purchase in New South Wales. For nearly a half century this form of disposal predominated although there had been some resort to leasehold, mainly the Homestead Farm type common to original Crown land disposals. The tenurial organisation of Closer Settlement was radically altered, however, in 1943 when provision was introduced for conversion to lease in perpetuity, and it was made clear that from then onwards the perpetual lease policy would prevail. The change was introduced primarily to met the wishes of settlers who for more than a decade of low returns to rural industry had

found it difficult to meet their annual interest and capital commitments. Relief measures such as interest reductions and instalment postponements had not resolved their problems. They sought security of tenure with freedom from capital debt, and an annual charge within the income capacity of their farms.

The bulk of Settlement Purchasers were given the right to apply within a fixed period for conversion to a lease in perpetuity. Leases were to carry an annual rent calculated at two-and-a-half per cent. of the land purchase debt at the time of conversion or of the farm market value, whichever was the lesser amount. If dissatisfied with the Closer Settlement Advisory Board's determination of farm value, the settler could appeal to the local Land Board and from there to the Land and Valuation Court. Also, the Minister for Lands could refer a Land Board decision to the Court. Upon conversion, a holding became a "Settlement Purchase Lease." Resident conditions similar to those pertaining to a Settlement Purchase applied to a Settlement Purchase Lease, and the law imposed restraints upon farm transfers where these might tend to speculation leading to uneconomic land settlement.

Many settlers availed themselves of the conversion legislation. By force of the change thus brought about, coupled with later subdivisions of acquired estates and their disposal by lease in perpetuity (known in these cases as Closer Settlement Leases), the lease in perpetuity has now come to occupy the place in closer settlement practice once held by the Settlement Purchase.

Financing of Land Purchasing and Subdivision. The capacity of the State to inaugurate and maintain a scheme of closer settlement based on the acquisition and disposal of privately owned estates is limited by the amount of finance available. Because the settlement of any number of farmers on areas sufficient to maintain them is a costly undertaking, the process is necessarily a gradual one. Moreover, the need for securing land at a cost that will allow a settler to discharge his purchase obligations and make a living from his farm imposes an additional restraint; land might not be available at a suitable price during boom periods, and there is the danger that the State, by operating on an extensive scale, might inflate land values to its disadvantage. Again, closer settlement, to a much greater degree than original Crown land settlement, requires for its more likely success that it attract a type of settler who possesses some capital of his own, so that an excessive burden of debt is not placed on each farm.

When closer settlement was first undertaken by New South Wales, the purchase of estates introduced a new security into the public debt in the form of Ministerial Certificates. These

were offered to vendors in lieu of cash. The certificates authorised the payment out of the Treasury by instalments of the amount of the purchase money or compensation. They could be negotiated only with the consent of the Minister for Lands. This restriction on the right of negotiation made the certificates unpopular and they played only a minor part in the finance of closer settlement. They were replaced by debentures with a fixed currency and without any restriction on their negotiation.

So far as concerns the Government's right against an owner, any purchase or resumption of land may be paid for in cash or by debentures. An issue of debentures, however, would constitute a borrowing by the State and thus would be subject to the Commonwealth/States Financial Agreement, requiring the consent of the Australian Loan Council. The ability of the State to undertake closer settlement activities to an extent involving the raising of fresh capital is conditioned by the general restraints on borrowings imposed by the agreement.

Closer settlement legislation provides that the capital resources of the State's rural lending institution may be availed of as an aid in the acquisition of estates. This is done indirectly. Any settlement purchase area may be set aside subject to a special condition that an application for a farm is accompanied by an undertaking by the applicant that he will, if so required, within twelve months of his application apply to the Rural Bank for the maximum advance the bank is prepared to make upon the security of a mortgage over the farm. The proceeds of the advance are to be applied in payment of the amount owing to the Government on the farm purchase price.

The Government, by virtue of the legislation, was recouped in quick time its capital outlay on the acquisition of several estates. This method of financing occupied only a relatively minor phase in the course of closer settlement. By and large, New South Wales, in the past, has conducted its closer settlement activities through a circulating fund financed in the main by borrowings.

The policy of outright disposal of closer settlement lands favours the circulating fund method, since moneys returned to the fund from farm purchase payments can be used again in acquiring estates. In course of time a large area might thus be acquired and converted into small holdings by capital spendings and re-spendings. There is no scope, on the other hand, for the circulating fund method when the tenure system is leasehold. Lands acquired for subdivision remain in State ownership and, as the original capital is thus locked up in landed assets, succeeding purchases of estates require the raising of fresh capital.

Closer Settlement Fund. New South Wales established a Closer Settlement Fund in 1906. As the early purchases of estates were financed mainly by debentures issued to vendors, it was not necessary to raise fund capital by public loans. Moreover, for a number of years, the practice was to appropriate portion of general revenue surpluses to the Closer Settlement Fund. Another but less direct form of subsidy from the general revenues was brought about by the inclusion of various Crown lands in closer settlement schemes. The Crown lands were dealt with for disposal purposes in conjunction with the closer settlement areas and receipts from the disposals were retained by the Closer Settlement Fund. Furthermore, surplus moneys derived by the Government from the assurance of land titles under the Real Property Act were used to augment the fund's capital.[4]

The volume of the Closer Settlement Fund was considerably expanded in 1928 by the incorporation of the finances of war service land settlement. The land settlement of servicemen from World War I had been conducted as a separate activity, financed by loans specially raised for the purpose. With the change effected in 1928, the liability for the loans was taken over by the Closer Settlement Fund, as also were war service land settlement assets. Repayments of settlement advances are retained by the fund.

The principal assets of the Closer Settlement Fund as it is now constituted consist of amounts owing by settlement purchasers, lands occupied under leasehold, unallotted lands and outstanding returned soldier settlement advances. The fund is liable for the borrowed capital from which the assets were acquired and for any claims under Real Property Act assurances to the extent of the total credit held on account of the Assurance Fund.

---

[4] For a number of years, a holder of land, when first bringing it under the Real Property Act, was required to pay an assurance fee to the Registrar General. Similarly, a payment had to be made by a person registering a title to land derived from the will or intestacy of a previous proprietor. The fees constituted an Assurance Fund, the purpose of which was to assure the holder's title against loss arising from any defect in the registration. A person sustaining loss or damage through an omission, mistake or misfeasance of the Registrar General or his officers, or in other prescribed circumstances, may bring action, and any damages or costs under the action can be recovered from the Assurance Fund.

Assurance fees greatly exceeded claims, and when eventually the Assurance Fund was incorporated in the Closer Settlement Fund it yielded a substantial capital, which has since remained, despite an amendment of the law discontinuing the payment of fees.

The cash account of the Closer Settlement Fund forms part of the Treasurer's Public Accounts, divorced from other accounts and funds so as to set out the transactions of closer settlement as a separate activity of government. Receipts, whether of a capital or revenue nature, are paid to the fund and expenditures likewise are met from it. Thus, a cardinal distinction in the public accounts by which transactions relating to borrowings are separated from revenue transactions is not carried into the finances of closer settlement.

Receipts of a capital nature include settlers' purchase repayments and the principal of returned soldier settlement advances. Revenue receipts are made up of interest on purchases and advances, and rents from lands occupied under leasehold tenures. Expenditures consist of the purchase price of estates, advances, expenses incurred in subdividing and preparing land for settlement, interest and sinking fund charges on the capital liability of the fund, claims on the Assurance Fund and costs of administration. With the exception of interest, sinking fund charges and claims on the Assurance Fund, which are permanently appropriated by the governing statute, expenditure from the fund requires the authority of a vote of Parliament. This authority continues for two complete financial years from the taking of the vote.

Two factors, recent in origin, have reduced the Closer Settlement Fund to relatively minor importance as a medium for financing and re-financing closer settlement in New South Wales. The first of these is the change to the perpetual lease system referred to above. The second is concerned with special measures undertaken by the State, in collaboration with the Commonwealth, for settling servicemen from World War II upon the land.

War Service Land Settlement

Early Measures. When war service land settlement was introduced after World War I, this was done by legislation distinct from the Closer Settlement Act. Because the acquisition of estates in sufficient number to cope with the demand for speedy settlement was a primary consideration, the more deliberative acquisition procedures laid down by the Closer Settlement Act gave way to a system of direct purchase with Executive Council approval. Parliamentary sanction to purchase terms was not requisite, nor was it sought. Otherwise, schemes for settling ex-servicemen were founded on estate subdivisions and disposals in accordance with normal closer settlement practice. Individual farm allocations were limited to home maintenance blocks, and the principal tenure — the Soldier Group Purchase — was in

essence similar to the Settlement Purchase, characteristic of civilian closer settlement. With so much of their administrative and financial organisation in common, it was inevitable that war service land settlement and the earlier form of civilian closer settlement would, in course of time, be merged. Hence their amalgamation, as referred to above, when a new Closer Settlement Fund was enacted in 1928.

Government assistance to ex-servicemen settlers went beyond the provision of land. Settlers were also granted advances for farm improvements and equipment, and for sustenance until farms reached a productive stage. Secured by mortgage, the advances, like farm purchase debts, were repayable by instalments over a number of years. They were made mainly from funds lent by the Commonwealth to the State.

In common with other Australian States, war service land settlement after World War I resulted in heavy losses to the public capital in New South Wales. A number of factors contributed to the losses. Most settlers were without funds of their own. They found themselves confronted with a debt load equal to and in many instances exceeding one hundred per cent. of farm values. Often, through war disabilities, lack of experience and training the personal element was not strong. Moreover, a number of the settlement blocks did not constitute a home maintenance area. Some portion of the loss to the public funds through settlers' inability to meet their debts was borne by the Commonwealth by waiver of State loan repayment, but the remaining burden, falling in large measure upon the Closer Settlement Fund, left a permanent mark upon the capital structure of that fund.

Joint Commonwealth and State Action. The Commonwealth, in making good some of the loss incurred by the State following World War I, gave recognition to its financial responsibility in relation to the land settlement of ex-servicemen. War service land settlement is, in fact, a joint venture between the State and the Commonwealth, involving one government from the angle of land utilisation and the other from the angle of repatriation.

This principle of dual responsibility is explicit in the agreement entered into between the Federal and State Governments for settling servicemen from World War II. The State, in addition to finding the land, provided the farm capital and working finance. The Commonwealth undertook to meet the cost of a course of training in farm management carried out at State Experiment Farms. It also administered to settlers' sustenance needs during

the training period and for the first year of farm occupancy. Farm occupational concessions and losses in this and also in the after period were to fall in agreed proportions upon the two governments.

War service land settlement is a branch of State closer settlement activity, largely dependent in its extent upon the acquisition and subdivision of private estates. The process of purchase or resumption and subdivision was carried on through several Advisory Boards in accordance with the machinery of the Closer Settlement Act, except for an agreement stipulation that the Commonwealth concur as to the suitability of an estate. It is a function of the Boards also to advise the Government upon closer settlement promotion proposals, that is to say, upon applications by groups of individuals seeking Government assistance in arranging the purchase and subdivision of an estate on their own account.[5]

Introducing new features into State closer settlement practice, a Classification Committee deals with farm applications from the angle of qualifications, medical fitness, experience and capacity for the particular type of rural industry in which an ex-serviceman proposes to engage. An applicant's right to participate in the scheme is based upon a certificate issued by the Classification Committee.

War service farms, whether derived from acquisitions by the Government or by promotion arrangement, are let under Closer Settlement Lease tenure, that is, by lease in perpetuity, with an annual rental of $2\frac{1}{2}$ per cent. of farm value, including ground improvements. Avoidance of excess capitalisation is aimed at from the outset by the writing down of farm values wherever the expenditure on acquisition, development and improvement exceeds assessed capital worth.

---

[5] The Legislature encourages groups of individuals to enter into agreements with land holders for the purchase and subdivision of estates. The Closer Settlement Act authorises the Crown to ratify the agreements and to assist, by arranging finance, in carrying them through. Hence the expression "Closer Settlement Promotion."

Promotion applications are subjected to the safeguard of investigation by the Government's technical officers, who advise the Minister for Lands upon the proposal. If the Minister is satisfied that the land is suitable for settlement, that the applicants are likely to work and develop it and that the portion required by each applicant does not substantially exceed a home maintenance area, he may approve the purchase. The Government finances the purchase upon the basis of valuation by its officers. Co-operation between the applicants ceases after completion of a purchase. The land is surrendered to the Crown, to be held by the applicants each according to his portion and the tenurial conditions attaching to it.

The settler is not required to meet any rental for the first year of occupancy. He is further assisted, in that advances made by the State for farm development and stocking are free of interest for one year, and from repayment obligation for later periods variously fixed according to the nature of expenditures from the advances. In terms of the agreement, concessions, reductions in capital values and losses on advance operations were to be shared equally by State and Federal Governments.

Expenditures by the State on the acquisition and development of land for war service land settlement are financed from the loan fund. Interest and sinking fund contributions are a charge upon the general revenues, to which collections of a revenue nature are credited. Settlers' capital repayments, on the other hand, are returned to the loan fund. It will thus be seen that the circulating fund method, for many years a feature of closer settlement finance, is not followed in relation to this section of State closer settlement activity.

The legal partnership between the Commonwealth and the State of New South Wales given effect in the War Service Land Settlement Agreement and sanctioned by Federal and State legislation of 1945 was terminated in 1949 following a majority decision by the High Court in a case in which the validity of the agreement was contested by the owner of a resumed estate. Pursuant to its policy of avoiding the impact of post-war inflation upon the cost of lands acquired for ex-servicemen, the State had enacted that in respect of resumptions under the scheme contained in the agreement the value assessed was not to exceed that as at 10th February, 1942, together with the value of improvements effected since that date. This proviso was embodied in the agreement. It was held by the Court that the Commonwealth law sanctioning the agreement was *ultra vires* the Constitution in that the proviso was in conflict with section 51 (xxxi), which in empowering the Federal Government to enact laws for the acquisition of property laid it down that such acquisitions must be made on just terms.[6]

While the agreement was thus rendered null and void, and all resumptions with attendant financial processes of the State based on the agreement had to be validated by special legislation of the State Parliament, the power of that Parliament to resume lands remained unimpaired. War service land settlement measures have so proceeded since the agreement was terminated. So far as concerns the continuance of Federal and State co-operation in

6 *P. J. Magennis Proprietary Limited* v. *the Commonwealth and the State of New South Wales* (80 C.L.R. 382).

these measures the matter has moved from the path laid down by the agreement to the more rugged field of Federal and State financial negotiation. It is still within the power of the Commonwealth to share the cost of war service land settlement by recourse to the provision for grants to the States contained in Section 96 of the Constitution.

Appendix

THE FINANCIAL AGREEMENT 1927/1944*

AGREEMENT made the twelfth day of December One thousand nine hundred and twenty-seven BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this Agreement called the Commonwealth) of the first part, THE STATE OF NEW SOUTH WALES of the second part, THE STATE OF VICTORIA of the third part, THE STATE OF QUEENSLAND of the fourth part, THE STATE OF SOUTH AUSTRALIA of the fifth part, THE STATE OF WESTERN AUSTRALIA of the sixth part, and THE STATE OF TASMANIA of the seventh part (each of the parties of the second, third, fourth, fifth, sixth, and seventh parts being in this Agreement referred to as a State and the expression "the States" hereinafter used meaning where the context so permits or requires all of such parties).

WHEREAS with a view to making provision for the adjustment of Commonwealth and State financial relations the general principle of a draft scheme was affirmed by a Conference of Commonwealth and State Ministers in Melbourne which commenced on the sixteenth day of June One thousand nine hundred and twenty-seven;

AND WHEREAS permanent effect cannot be given to the proposals contained in the said scheme unless the Constitution of the Commonwealth is altered so as to confer on the Parliament of the Commonwealth power to make laws for carrying out or giving permanent effect to such proposals;

AND WHEREAS pending the submission to the electors of a proposed law for the alteration of the said Constitution as aforesaid and in order to obtain immediately some of the advantages which would result from united action by adoption of the said scheme the Commonwealth and the States have agreed that for the period commencing on the first day of July One thousand nine hundred and twenty-seven and ending on the thirtieth day of June One thousand nine hundred and twenty-nine certain of the proposed provisions of the said scheme shall be temporarily adopted:

---

* This Agreement is a reprint of the Financial Agreement made the 12th December, 1927, between the Commonwealth and the States, as varied by provisions of other Agreements made between the same parties, namely, by Clause 18 of an Agreement made the 3rd July, 1934, and by Clauses 2, 3, 4 and 5, and sub-clause (1.) of Clause 7, of an Agreement made the 15th November, 1944.

The Financial Agreement is also affected by the following Agreements made between the Commonwealth and the States, namely, an Agreement made the 21st July, 1931, and an Agreement made the 22nd October, 1931, and by provisions, other than Clause 18, of the aforesaid Agreement made the 3rd July, 1934, and by an Agreement made the 11th September, 1928, between the Commonwealth and the State of Tasmania.

The variations made by the Agreement of the 15th November, 1944 (other than those which are noted in the margin of this reprint as being effective from specified dates), came into force on the date on which that Agreement came into force.

NOW THIS AGREEMENT WITNESSETH:

PART I.

1. This Agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the States.

DEFINITIONS.

2. In this Agreement—

"Net Public debt of a State existing on 30th June, 1927," means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz.:—

New South Wales	£234,088,501*
Victoria	136,949,942*
Queensland	101,977,855*
South Australia	84,834,364*
Western Australia	61,060,675
Tasmania	22,434,060*
	£641,345,397*

The said amount of the net public debt of each State includes the debts of that State secured by—

(i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;
(ii) Instalment Stock;
(iii) Registered Stock;
(iv) Funded Stock;
(v) Stock payable to bearer;
(vi) Bonds, including registered bonds;
(vii) Debentures, including registered debentures and instalment debentures;
(viii) Treasury Bills not repayable within twelve months from the date of issue; or
(ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes;

issued or created by the State or by or on behalf of a Colony the predecessor of the State in respect of moneys borrowed by the Colony or State together with debts of the State to the Commonwealth of the amount set out respectively hereunder opposite to the name of the State so far as those last mentioned debts are not included by being secured in manner aforesaid:—

* The amounts of the "Net Public Debt" of the States and "Gross Public Debt" of the States as set out in clause 2, have been varied as from 1st July, 1927, by the provisions of the Agreement made 3rd July, 1934. The amounts as so varied are as follows:—

	Net Public Debt.	Gross Public Debt.
	£	£
New South Wales	233,153,779	238,506,641
Victoria	136,348,982	144,243,570
Queensland	101,840,622	105,122,683
South Australia	84,029,376	86,809,017
Western Australia	61,060,675	70,705,913
Tasmania	22,314,180	24,134,808
	638,747,614	669,522,632

New South Wales	£12,553,698
Victoria	23,688,269
Queensland	16,082,583
South Australia	18,446,197
Western Australia	16,739,872
Tasmania	3,948,613
	£91,459,232

after deducting therefrom the amount for which the Commonwealth by this Agreement assumes liability under Clause 13 of this Agreement and the amount of any moneys or securities standing to the credit of a sinking fund, redemption fund, or a fund of a like nature of the State as on 30th June, 1927, and does not include any moneys raised by the State by way of overdraft, fixed deposit, or special deposit for temporary purposes only.

The said sum of £234,088,501 (being the amount of the debt of New South Wales abovementioned) comprises the debts referred to in, and has been computed in the manner shown in, the statement signed by representatives of the Commonwealth and of New South Wales.

"Gross Public Debt of a State existing on 30th June, 1927," means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz.:—

New South Wales	£239,441,363†
Victoria	144,844,530†
Queensland	105,259,916†
South Australia	87,614,005†
Western Australia	70,705,913
Tasmania	24,254,688†
	£672,120,415†

The said amount of the gross public debt of each State includes the net public debt of that State together with the amount for which the Commonwealth by this Agreement assumes liability under Clause 13 of this Agreement and the amount of any moneys or securities standing to the credit of any sinking fund, redemption fund or fund of a like nature of the State as on 30th June, 1927.

"Transferred Properties" means the properties mentioned or specified in the Schedule of Transferred Properties signed by representatives of the Commonwealth and the States as revised to the 30th June, 1927, being properties which became vested in the Commonwealth pursuant to Section 85 (i) of the Constitution of the Commonwealth.

"The Loan Council" means the Australian Loan Council created in pursuance of this Agreement.

"Bondholder" means an owner of any—

(i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;

(ii) Instalment Stock;

† See footnote to definition of "Net public debt of a State existing on 30th June, 1927," in this clause.

(iii) Registered Stock;
(iv) Funded Stock;
(v) Stock payable to bearer;
(vi) Bonds, including registered bonds;
(vii) Debentures including registered debentures and instalment debentures;
(viii) Treasury Bills not repayable within twelve months from the date of issue; or
(ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes;

issued or created by a State or by or on behalf of a Colony the predecessor of the State in respect of borrowed moneys but does not include the Commonwealth.

AUSTRALIAN LOAN COUNCIL.

3.—(1.) (*a*) There shall be an Australian Loan Council which shall consist of one representative of the Commonwealth who shall be— Sub-clause (1.) substituted by Agreement of 3rd July, 1934, Clause 18.

(i) the Prime Minister of the Commonwealth; or
(ii) in the absence of the Prime Minister at any time from a meeting of the Council—a Minister nominated in writing by the Prime Minister,

and one representative of each State who shall be—

(iii) the Premier of that State; or
(iv) in the absence of the Premier at any time from a meeting of the Council—a Minister nominated in writing by the Premier of that State.

Provided that if, in the opinion of the Prime Minister or of any Premier of a State, special circumstances exist at any time which make it desirable so to do, the Prime Minister or the Premier, as the case may be, may nominate some other person to represent the Commonwealth or the State (as the case may be) as a member of the Loan Council.

(*b*) Any nomination of a representative of a State shall be notified in writing by the Premier of the State to the Prime Minister.

(2.) The member representing the Commonwealth on the Loan Council shall hold office during the pleasure of the Prime Minister of the Commonwealth and a member representing a State shall hold office during the pleasure of the Premier of the State which the member was appointed to represent.

(3.) The member representing the Commonwealth shall be the Chairman of the Loan Council. Inserted by Agreement of 15th November, 1944, Clause 2.

(4.) A decision in which all the members for the time being of the Loan Council concur shall be a unanimous decision of the Loan Council notwithstanding any vacancy then existing in its membership.

(5.) A meeting of the Loan Council may at any time be convened by the member representing the Commonwealth, and shall be so convened upon the request of at least three members representing States.

(6.) A majority of the members of the Loan Council shall constitute a quorum of the Loan Council for the exercise of its powers at any meeting. Provided that—

(*a*) a member may at any time appoint in writing a deputy to act in his absence; and any deputy so appointed may in the absence of the member exercise all the powers and functions of the member and his presence shall be deemed the presence of the member; and

(*b*) an absent member who has not appointed a deputy may vote by letter or by telegram, and in such case that member shall be counted as being present in relation only to the questions on which he has voted.

(7.) The Loan Council may make rules of procedure including rules relating to places, times, and notices of meetings, and conduct of business at meetings, and from time to time may alter such rules.

Varied by Agreement of 15th November, 1944, Clause 2.

(8.) The Commonwealth and each State will from time to time, while Part III. of this Agreement is in force, submit to the Loan Council a programme setting forth the amount it desires to raise by loans during each financial year for purposes other than the conversion, renewal or redemption of existing loans or temporary purposes. Each programme shall state the estimated total amount of such loan expenditure during the year, and the estimated amount of repayments which will be available towards meeting that expenditure. Any revenue deficit to be funded shall be included in such loan programme, and the amount of such deficit shall be set out. Loans for Defence purposes approved by the Parliament of the Commonwealth shall not be included in the Commonwealth's loan programme or be otherwise subject to this Agreement.

Varied by Agreement of 15th November, 1944, Clause 2.

(9.) If the Loan Council decides that the total amount of the loan programme for the year cannot be borrowed at reasonable rates and conditions it shall decide the amount to be borrowed during the year, and may by unanimous decision allocate such amount between the Commonwealth and the States.

Varied by Agreement of 15th November, 1944, Clause 2 (b) and (d). The variation made by Clause 2 (d) became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2).

(10.) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause allocating the amount to be borrowed during any year, the amount to be borrowed during that year shall be allocated as follows:—

(*a*) The Commonwealth shall, if it so desires, be entitled to have one-fifth or any less proportion of such amount allocated to the Commonwealth; and

(*b*) Each State shall be entitled to have allocated to it a sum (being a portion of the balance of such amount) bearing to the balance of such amount the same proportion which the net loan expenditure of that State in the preceding five years bears to the net loan expenditure of all the States during the same period. Provided that any State may, if it so desires, have allocated to it a sum less than the sum to which it is entitled under this sub-clause or no sum, and that when a less sum or no sum has been allocated to any State or States in manner aforesaid the amount then remaining available for allocation shall be allocated to the other States in the proportion which the net loan expenditure of each of such other States in the preceding five years bears to the net loan expenditure of all such other States during the same period. For the purposes of this sub-clause net loan expenditure does not include expenditure for the conversion, renewal, or redemption of loans, or for the funding of revenue deficits or to meet revenue deficits, or any specified amount or class of expenditure which the Loan Council by unanimous decision declares shall not be included, but means the gross other loan expenditure of a State less any amounts of such expenditure repaid to the State other than moneys repaid to the State in manner stated in sub-clause (9.) of Clause 12 of this Agreement.

(11.) If the total amount to be borrowed as aforesaid during any year is to be borrowed by means of more than one loan the Loan Council may by unanimous decision apportion between the Commonwealth and the States the amount to be borrowed by each such loan other than the loan by means of which the balance of the total amount to be borrowed as aforesaid during the year is borrowed. Varied by Agreement of 15th November, 1944, Clause 2.

(12.) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause apportioning the amount to be borrowed as aforesaid by any loan the amount to be borrowed by that loan shall be apportioned between the Commonwealth and the States in proportion to the amount then to be borrowed as aforesaid for the Commonwealth and for each State during the year. Varied by Agreement of 15th November, 1944, Clause 2.

(13.) The Commonwealth and each State will also from time to time, while Part III. of this Agreement is in force, submit to the Loan Council a statement setting out the amount it requires during each financial year for the conversion, renewal or redemption of existing loans. Varied by Agreement of 15th November, 1944, Clause 2.

(14.) (a) If the members of the Loan Council fail to arrive at a unanimous decision on any matter other than the matters in respect of which unanimous decision is required by sub-clauses (9), (10) and (11) of this clause and sub-clause (2) of clause 4 of this Agreement, the matter shall be determined by a majority of votes of the members. Varied by Agreement of 15th November, 1944, Clause 2.

(*b*) On every question for decision by the Loan Council the member representing the Commonwealth shall have two votes and a casting vote, and each member representing a State shall have one vote. Variation became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2.).

(15.) A decision of the Loan Council in respect of a matter which the Loan Council is by this Agreement empowered to decide shall be final and binding on all parties to this Agreement.

(16.) In this clause the expressions "Prime Minister" and "Premier" include the persons for the time being respectively acting as such.

Future Borrowings of Commonwealth and States.

4. —(1.) Except in cases where the Loan Council has decided under sub-clause (2.) of this clause that moneys shall be borrowed by a State, the Commonwealth, while Part III. of this Agreement is in force, shall, subject to the decisions of the Loan Council and subject also to Clauses 5 and 6 of this Agreement, arrange for all borrowings for or on behalf of the Commonwealth or any State, and for all conversions, renewals, redemptions, and consolidations of the Public Debts of the Commonwealth and of the States.

(2.) If at any time the Loan Council by unanimous decision so decides, a State may in accordance with the terms of the decision borrow moneys outside Australia in the name of the State, and issue securities for the moneys so borrowed. The Commonwealth shall guarantee that the State will perform all its obligations to bond holders in respect of the moneys so borrowed. For all the purposes of this Agreement, including the making of sinking fund contributions, the moneys so borrowed shall be deemed to be moneys borrowed by the Commonweath for and on behalf of that State.

(3.) If any State after the 30th June, 1927, and before this Agreement has been approved by the Parliaments of the Commonwealth and of the States, has borrowed moneys in the name of the State and issued securities for the moneys so borrowed, such moneys shall for all the purposes of this Agreement, including the making of sinking fund contributions, be deemed to be moneys borrowed by the Comonwealth for and on behalf of that State.

(4.) While Part III. of this Agreement is in force, moneys shall not be borrowed by the Commonwealth or any State otherwise than in accordance with this Agreement.

BORROWING BY STATES

5—(1.) For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) a State may, while Part III. of this Agreement is in force:—

(*a*) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the State from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and

(*b*) use any public moneys of the State which are available under the laws of the State.

(2.) Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

(3.) Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

(4.) Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State, and may be retained by the State. A State may convert securities given or issued at any time by that State for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council. The amount for which such new securities are issued shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State.

Varied by Agreement of 15th November, 1944, Clause 3.

(5.) If the moneys deemed under this clause to be moneys borrowed by the Commonwealth on behalf of a State, together with the amounts raised by the Commonwealth for and on behalf of the State exceed the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the State during the financial year in which the money is deemed to be borrowed, the excess shall, unless the Loan Council otherwise decides, be deemed to be moneys received by the State in the following year on account of its loan programme for that year.

(6.) For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the State Treasury, and at such other places as may be decided upon by the Loan Council.

Varied by Agreement of 15th November, 1944, Clause 3.

Variation became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2.).

(7.) The Commonwealth shall not be under any obligation to make sinking fund contributions in respect of moneys borrowed or used pursuant to this clause to meet a revenue deficit of a State, but the provisions of sub-clause (10.) of Clause 12 of this Agreement shall apply respectively to all moneys borrowed or used for that purpose. This sub-clause shall not apply to or in respect of any of the loans referred to in sub-clause (11.) of Clause 12 of this Agreement.

(8.) Except in cases where the Loan Council has otherwise decided under sub-clause (2.) of Clause 4 of this Agreement a State shall not have the right to invite loan subscriptions by the issue of a public prospectus.

(9.) Notwithstanding anything contained in this Agreement, any State may use for temporary purposes any public moneys of the State which are available under the laws of the State, or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow money for temporary purposes by way of overdraft or fixed, special or other deposit, and the provisions of this Agreement other than this sub-clause shall not apply to such moneys.

Borrowing by Commonwealth.

6.—(1.) For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) the Commonwealth may, while Part III. of this Agreement is in force—

(*a*) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the Commonwealth from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and

(*b*) use any public moneys of the Commonwealth which are available under the laws of the Commonwealth.

(2.) Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

(3.) Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

(4.) Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used may be retained by the Commonwealth. The Commonwealth may convert securities given or issued at any time by the Commonwealth for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms aproved by the Loan Council.

(5.) If the moneys so borrowed or used are not borrowed or used solely for temporary purposes and Commonwealth securities are issued in respect thereof, and such moneys, together with other moneys borrowed by the Commonwealth for and on behalf of the Commonwealth as part of the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the Commonwealth during the financial year in which the securities are issued, exceed such total amount the excess shall unless the Loan Council otherwise decides be deemed to be moneys received by the Commonwealth in the following year on account of its loan programme for that year.

Varied by Agreement of 15th November, 1944, Clause 4.

(6.) For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the Commonwealth Treasury, and at such other places as may be decided upon by the Loan Council.

(7.) Notwithstanding anything contained in this Agreement, the Commonwealth may use for temporary purposes any public moneys of the Commonwealth which are available under the laws of the Commonwealth or may, subject to maximum limits (if any) decided upon by the Loan

Council from time to time for interest, brokerage, discount and other charges, borrow money for temporary purposes by way of overdraft or fixed, special or other deposit, and the provisions of this Agreement other than this sub-clause shall not apply to such moneys.

Inoperative provision—deleted by Agreement of 15th November, 1944, Clause 7.

7. * * * * * * * * *

Part II.—Temporary provisions—deleted by Agreement of 15th November, 1944, Clause 7.

PART II.

* * * * * * * * * *

PART III.

8. This Part of this Agreement shall not come into force or be binding upon any party hereto unless before the 1st July, 1929, the Constitution of the Commonwealth has been altered in accordance with the proposals referred to in Part IV. of this Agreement and a law of the Parliament of the Commonwealth has been made thereunder validating this Agreement, but shall come into full force and effect if and when before the said date the Constitution is so altered and this Agreement is so validated.

9. When this Part of this Agreement comes into force every matter or thing done and payment made under or in pursuance of Part II. of this Agreement shall be deemed, so far as is practicable, to have been done or made under this Part of this Agreement to the same extent as if this Part had then in fact been in force, and all necessary adjustments shall be made in respect of moneys so paid in order to ensure that no party hereto shall be liable for or make double payments in respect of the same matter.

PERMANENT PROVISIONS.

Taking over States' Public Debts.

10. Subject to the provisions of this Part of this Agreement the Commonwealth will take over on the 1st July, 1929:—

(i) the balance then unpaid of the gross public debt of each State existing on 30th June, 1927; and

(ii) all other debts of each State existing on the 1st July, 1929, for moneys borrowed by that State which by this Agreement are deemed to be moneys borrowed by the Commonwealth for and on behalf of that State—

and will in respect of the debts so taken over assume as between the Commonwealth and the States the liabilities of the States to bondholders.

Payment of Interest.

11.—(1.) Subject to this clause the Commonwealth will pay to bondholders from time to time interest payable on the Public Debts of the States taken over by the Commonwealth as aforesaid other than debts due by the States to the Commonwealth.

(2.) The Commonwealth will in each year during the period of 58 years, commencing on 1st July, 1927, provide by equal monthly instalments the following amounts in respect of each State as shown hereunder towards the interest payable by that State:—

New South Wales	£2,917,411
Victoria	2,127,159
Queensland	1,096,235
South Australia	703,816

Western Australia	473,432
Tasmania	266,859
	£7,584,912

(3.) Each State shall in each year during the same period of 58 years pay to the Commonwealth the excess over the amounts to be provided by the Commonwealth under the last preceding sub-clause necessary to make up as they fall due the interest charges falling due in that year on the public debt of that State taken over by the Commonwealth as aforesaid and then unpaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid, and after the expiration of the said period each State shall in each year pay to the Commonwealth, as they fall due, the whole of the interest charges on any debt then unpaid and included in the public debt of that State taken over by the Commonwealth as aforesaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid.

(4.) The method by which payments shall be made by a State under sub-clause (3.) of this clause shall be arranged from time to time between the Commonwealth and that State.

(5.) The rate of interest payable under sub-clause (3.) of this clause in respect of moneys borrowed by the Commonwealth on behalf of a State shall be the full rate of interest payable by the Commonwealth in respect of the loan by which such moneys were borrowed or such other rate of interest as may be payable by the State to the Commonwealth under any Agreement made or to be made between the Commonwealth and that State in respect of such moneys and such interest shall be payable by the State for the full term of that loan.

SINKING FUNDS.

12—(1.) A sinking fund at the rate of 7s. 6d. per annum for each £100 of the net public debts of the States existing on 30th June, 1927, shall be established in the manner hereinafter set forth.

(2.) During the period of fifty-eight years commencing on the 1st July, 1927, the Commonwealth shall pay from revenue annually a sinking fund contribution at the rate of 2s. 6d. for each £100 of the net public debts of the States existing on 30th June, 1927, and each State (other than the State of New South Wales) shall in each year during the said period pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of such State existing on 30th June, 1927. The State of New South Wales during the period of fifty-eight years commencing on the 1st July, 1928, shall in each year pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of that State existing on 30th June, 1927.

(3.) Where in respect of any debt included in the gross Public Debt of a State existing at the 30th June, 1927, there is under laws or contracts existing at that date an obligation to provide a sinking fund at a rate in excess of 7s. 6d. per annum for each £100, any amount to be so provided in excess of 7s. 6d. per annum for each £100 shall be provided out of the National Debt Sinking Fund, established under the laws of the Commonwealth. Provided that if any law imposing such an obligation is repealed or is amended so as to reduce the rate of sinking fund to be provided the only amount (if any) to be provided out of the National Debt Sinking Fund pursuant to this sub-clause in respect of that debt shall as from the date of such repeal or amendment be the amount (if any) by which the

reduced rate of sinking fund for the time being exceeds 7s. 6d. per annum for each £100.

(4.) When a loan is issued for the conversion, renewal, or redemption of any debt of a State included in the gross Public Debt of that State existing on 30th June, 1927, the only sinking fund contributions to be made by the Commonweath and that State in respect of the debt so converted, renewed, or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such debt had not been converted, renewed, or redeemed.

Sub-clauses (5.) and (6.) varied by Agreement of 15th November, 1944, Clause 5. Variations became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2).

(5.) Subject to sub-clauses (8.), (10.) and (11.) of this clause a sinking fund at the rate of 10s. per annum for each £100 of the amount of each new loan raised by a State or by the Commonwealth for and on behalf of a State after 30th June, 1927, shall be established.

(6.) Subject to sub-clauses (8.), (10.) and (11.) of this clause, in each year during the period of fifty-three years from the date of the raising after 30th June, 1927, of any new loan by a State or by the Commonwealth for and on behalf of a State the Commonwealth and that State shall each pay from revenue a sinking fund contribution of a sum equal to 5s. for each £100 of the amount of the new loan.

Provided that the period of fifty-three years during which the State of New South Wales shall make sinking fund contributions in respect of new loans raised in the financial year beginning on the 1st July, 1927, shall commence on the 1st July, 1928.

(7.) For the purpose of the last two preceding sub-clauses a loan issued after the 30th June, 1927, to meet a revenue deficit which accrued on or before that date shall be deemed to be a new loan, but a loan issued for the conversion, renewal or redemption of a debt shall not be deemed to be a new loan, and where a loan is issued partly for the conversion, renewal, or redemption of a debt and partly for other purposes so much only of the loan as has been issued for other purposes, shall be deemed to be a new loan.

(8.) Where it is agreed between the Commonwealth and a State that a loan or any portion of a loan raised after 30th June, 1927, and expended or to be expended upon wasting assets should be redeemed within a shorter period than fifty-three years, the annual sinking fund contributions of the State in respect of that loan or the portion thereof, shall be increased to an amount which with the sinking fund contributions of the Commonwealth in respect of that loan or the portion thereof will provide for the redemption of that loan or the portion thereof within such shorter period. All sinking fund contributions of the State in respect of that loan or the portion thereof shall cease on the expiration of the shorter period, but the Commonwealth contributions in respect of that loan shall continue for the remainder of the period of fifty-three years from the date of the raising of that loan, and during such remainder of the period the State contributions to the sinking fund in respect of other loans of that State shall be reduced by the amount of the Commonwealth contributions during that remainder of the period in respect of such redeemed loan or the portion thereof. For the purposes of this sub-clause the sinking fund contributions of the Commonwealth and the State shall be deemed to accumulate at the rate of 4½ per centum per annum compounded.

(9.) Where loan moneys have been advanced by a State under terms providing for the repayment of such moneys the State shall as and when such moneys are repaid pay such moneys either to the State Loan Fund or to the account or fund from which such moneys were advanced, or to the sinking fund and shall in addition make from revenue its sinking fund

contributions in respect of the loan or loans from which the moneys so advanced were provided. Provided that when loan moneys have been advanced by a State to a Public or Local Authority or body constituted by the State or under the laws of the State and the Authority or body repays such moneys out of its revenue the State may out of moneys so repaid make its sinking fund contributions in respect of the loan moneys so advanced.

(10.) In respect of any loan (except any of the loans referred to in sub-clause (11.) of this clause) raised after the 30th June, 1927, by a State or by the Commonwealth for and on behalf of a State to meet a revenue deficit accruing after that date no sinking fund contribution shall be payable by the Commonwealth, but that State shall for a period sufficient to provide for the redemption of that loan pay from revenue in each year during such period a sinking fund contribution at a rate of not less than 4 per centum per annum of the amount of that loan. For the purposes of this sub-clause the sinking fund contributions of the State shall be deemed to accumulate at the rate of 4½ per centum per annum compounded.

Varied by Agreement of 15th November, 1944, Clause 5. Variation became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (2.).

(11.) (*a*) In respect of loans raised by a State or by the Commonwealth for and on behalf of a State on the security of Commonwealth Treasury Bills to meet a revenue deficit accruing after 30th June, 1927, and before 1st July, 1935 (such loans being referred to in this sub-clause as "special deficit loans"), the Commonwealth and the State shall respectively in each year during the period commencing on 1st July next succeeding the date on which the loans are raised and ending on 30th June, 1944, pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the total amount of the face values of the Commonwealth Treasury Bills which have been issued in respect of special deficit loans of that State and which are current on 30th June next preceding the commencement of the year in which the sinking fund contribution is payable.

Sub-clause (11.) inserted by Agreement of 15th November, 1944, Clause 5. Paragraph (a) became effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (3.).

(b)—(i) The amount set out hereunder opposite the name of a State shall be applied by the National Debt Commission to the repurchase or redemption of securities issued in respect of special deficit loans of that State:—

Effective from 1st July, 1944.—Agreement of 15th November, 1944, Clause 6 (4.).

New South Wales	£1,970,000
Victoria	260,000
Queensland	125,000
South Australia	300,000
Western Australia	335,000
Tasmania	10,000
	£3,000,000

(ii) The amount set out in sub-paragraph (i) of this paragraph opposite the name of a State represents the approximate aggregate as on 1st July, 1944, of the sinking fund contributions paid by the Commonwealth and that State under paragraph (*a*) of this sub-clause together with accumulations on those contributions at the rate of 4½ per centum per annum compounded.

(iii) The provisons of sub-clause (18.) of this clause, which require the State to make further sinking fund contributions at the rate of 4½ per centum per annum of the face value of a cancelled security, shall not apply to or in respect of any security repurchased or redeemed under this paragraph.

Effective from 1st July, 1944.—Agreement of 15th November, 1944, Clause 6 (4.).

(*c*) In each year during the period of 39 years commencing on 1st July, 1944, the Commonwealth and the State concerned shall each pay from revenue a sinking fund contribution which, in the case of the Commonwealth, shall be at the rate of 5s. for each £100 of the amount of the special deficit loans of that State, and, in the case of the State, shall be at the rate of 15s. for each £100 of that amount. In this paragraph and paragraphs (*d*) and (*e*) of this sub-clause the amount of the special deficit loans of a State shall be taken to be the amount set out hereunder opposite the name of that State, viz.:—

New South Wales	£26,120,000
Victoria	3,995,000
Queensland	2,148,000
South Australia	4,920,000
Western Australia	5,390,000
Tasmania	445,000
	£43,018,000

The sum which is to be taken as the amount of the special deficit loans of a State as set out in this paragraph opposite the name of that State represents the gross total of the special deficit loans of that State as on 1st July, 1944, less:—

(i) the amount which the National Debt Commission is required under paragraph (*b*) of this sub-clause to apply to the repurchase or redemption of securities issued in respect of special deficit loans of that State; and

(ii) the amount which that State has undertaken to apply to the redemption or repurchase of such securities.

Effective from 1st July, 1944.—Agreement of 15th November, 1944, Clause 6 (4.).

(*d*) All sinking fund contributions payable under paragraph (*c*) of this sub-clause in respect of the amount of special deficit loans of a State, and all further sinking fund contributions required to be made under sub-clause (18.) of this clause upon the cancellation of a security issued in respect of that amount, shall be applied to the repurchase or redemption of securities issued in respect of that amount.

Effective from 1st July, 1944.—Agreement of 15th November, 1944, Clause 6 (4.).

(*e*) When a loan is raised for the conversion, renewal or redemption of the whole or any portion of the amount of the special deficit loans of a State, the only sinking fund contributions to be made by the Commonwealth and the State in respect of the amount or portion so converted, renewed or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such amount or portion had not been converted, renewed or redeemed.

(12.) All sinking fund contributions to be made in pursuance of this Part of this Agreement shall be debts payable to the National Debt Commission as follows:—

(*a*) As regards the net public debt of a State existing on 30th June, 1927—by half-yearly instalments on 30th September and 31st March in each financial year or on such other dates as may be agreed between the Commonwealth and that State.

(*b*) As regards loans raised after 30th June, 1927—by equal instalments on the dates on which interest on such loans is payable or on such other dates as may be agreed upon between the Commonwealth and the State concerned.

(13.) Subject to the next succeeding sub-clause all moneys and securities standing to the credit of sinking funds, redemption funds and funds

of a like nature of a State existing on 30th June, 1929, shall forthwith be transferred by the States to the National Debt Commission. Nothing in this sub-clause contained shall be deemed to limit the power of a State to cancel before 30th June, 1929, any such securities.

(14.) Where the conditions relating to sinking funds, redemption funds, and funds of a like nature as aforesaid held by a State on trust or by trustees under statutory or contractual obligations preclude the transfer of those funds to the National Debt Commission, such funds shall remain under the control of the State or those trustees, and the National Debt Commission will either directly or through the State concerned make all future payments to the State or to those trustees from the sinking fund.

(15.) The sinking funds to be established under this Agreement shall be controlled by the National Debt Commission. The National Debt Commission may arrange with any State to act as its agent in connexion with payments due to bondholders.

(16.) Sinking fund contributions made under this Agreement in respect of the debts of a State and funds of that State transferred to the National Debt Commission under sub-clause (13.) of this clause will not be accumulated, but (subject to sub-clauses (14.) and (17.) of this clause) will be applied to the redemption of the public debts of that State and of loans raised by the Commonwealth for and on behalf of that State, or to the purchase of securities issued in respect thereof.

(17.) If at any time it is deemed inexpedient by the National Debt Commission to apply sinking funds in the manner set forth in sub-clause (16.) of this clause, such funds may be temporarily invested in any securities in which the National Debt Commission is from time to time by law authorized to invest moneys.

(18.) (*a*) When a security issued in respect of a public debt of a State or of a loan raised by the Commonwealth for and on behalf of a State is repurchased or redeemed by the National Debt Commission such security shall be cancelled—

(i) if a repurchased security—on the last day of September, December, March, or June next ensuing after the date of repurchase, or on the date of maturity of the security whichever shall first occur; and

(ii) if a redeemed security—on the date of redemption.

(b) In addition to the sinking fund contributions otherwise payable in respect of that debt or loan the State concerned shall—

(i) as from the date of cancellation of each security and for the full period during which the said sinking fund contributions are payable make from revenue a further sinking fund contribution at the rate of 4½ per centum per annum of the face value of the cancelled security; and

(ii) also pay to the National Debt Commission interest on the face value of each repurchased security at the rate provided by the security from the last date preceding the repurchase upon which interest was payable under the terms of the security up to the date of cancellation of the security.

(19.) (*a*) Subject to paragraph (*b*) of this sub-clause, a State may, from time to time, pay to the National Debt Commission a sum in addition to sinking fund contributions for the purpose of being applied to the repurchase or redemption of securities issued in respect of a public

Inserted by Agreement of 15th November, 1944, Clause 5.

debt of the State or a loan raised by the Commonwealth for and on behalf of the State. The provisions of sub-clause (18.) of this clause shall apply with respect to any security so repurchased or redeemed (including any security repurchased or redeemed in accordance with paragraph (*b*) of this sub-clause) provided that the State shall not be required to make any further sinking fund contribution under sub-clause (18.) of this clause upon the cancellation of the security.

(*b*) If any such sum is tendered by the State to the National Debt Commission, and is accepted by the National Debt Commission, for the purpose mentioned in paragraph (*a*) of this sub-clause but subject to either or both of the following conditions, namely,

(i) that the sum shall be applied to the repurchase or redemption of particular securities specified by the State;

(ii) that sinking fund contributions of the Commonwealth and the State payable under sub-clause (2.), (6.), (8.), (10.) or (11.) of this clause in respect of the amount represented by the repurchased or redeemed securities shall cease as from the date of cancellation of those securities,

that sum shall be applied, and the condition or conditions shall take effect, accordingly.

Inserted by Agreement of 15th November, 1944, Clause 5. Effective from 1st July, 1937.—Agreement of 15th November, 1944, Clause 6 (6.).

(20.) (*a*) Where, upon the conversion or partial conversion at a discount of a loan raised by or on behalf of a State, sinking fund moneys are applied to the redemption of any amount of the converted loan, the State shall repay to the National Debt Commission from State revenue so much of the sinking fund moneys so applied as does not exceed the aggregate amount of the discounts allowed to subscribers to the loan raised to effect the conversion or partial conversion.

(*b*) Repayment by the State shall, unless otherwise approved by the National Debt Commission, be by equal annual instalments extending over the period of the loan raised to effect the conversion or partial conversion. For the purpose of calculating the amount of the annual instalments any broken portion of a year shall be disregarded.

(*c*) Where, by the terms of the loan raised to effect the conversion or partial conversion, the borrower has an option as to the date upon which the borrower shall be entitled to redeem the loan, the period of the loan shall, for the purposes of this sub-clause, be deemed to be the period terminating upon the earliest date of redemption provided for by the terms of the loan.

(d) All repayment instalments payable to the National Debt Commission in pursuance of this sub-clause shall be payable at such times as shall be fixed by the National Debt Commission, and shall be applied as if they were sinking fund contributions made by the State under this clause, provided that the State shall not be required to make any further sinking fund contribution under sub-clause (18.) of this clause upon the cancellation of any security to the repurchase or redemption of which any repayment instalment has been applied.

Inserted by Agreement of 15th November, 1944, Clause 5. Effective from 1st July, 1927.—Agreement of 15th November, 1944, Clause 6 (7.).

(21.) All sinking fund contributions payable under this Agreement in respect of overseas debt, and all further sinking fund contributions so payable upon the cancellation of securities in respect of overseas debt, shall be calculated at the mint par of exchange prevailing on 1st July, 1927.

TRANSFERRED PROPERTIES.

13. It is agreed that all questions between the Commonwealth and the States relating to State properties transferred to the Commonwealth or

acquired by the Commonwealth under section 85 of the Constitution shall be settled as follows:—

(*a*) The States will as from 1st July, 1929, and as between the Commonwealth and the States be completely free and discharged from all liability whether in respect of principal, interest or sinking fund, or otherwise, which liability shall be assumed by the Commonwealth in respect of so much of the public debts of the States bearing interest at the rate of 5 per centum per annum taken over by the Commonwealth as aforesaid as amounts to the agreed value of transferred properties, namely, £10,924,323, apportioned to the several States as follows:—

New South Wales	£4,788,005
Victoria	2,302,862
Queensland	1,560,639
South Australia	1,035,631
Western Australia	736,432
Tasmania	500,754
Total	£10,924,323

(*b*) The particular portion of the public debt of each State in respect of which the States shall become free and discharged from liability shall be determined by the Commonwealth.

(*c*) Each State will issue to the Commonwealth freehold titles (or, if the laws of any State do not permit of the issue of freehold titles, then titles as near to freehold as the laws of that State will permit) for transferred properties consisting of land or interests in land in that State, and all liability of the Commonwealth to the State in respect of transferred properties shall as from the 1st July, 1929, be extinguished.

(*d*) The provisions of Clauses 11 and 12 of this Agreement shall not apply to the said amount of £10,924,323.

PART IV.—MISCELLANEOUS.

Expenses of Loan Flotation.

14.—(1.) Each State shall repay to the Commonwealth all expenses incurred or payments made by the Commonwealth in the performance of this Agreement in relation to the State, including the following expenses and payments:—

(*a*) Loan flotation charges;
(*b*) Management charges;
(*c*) Stamp duties on transfer of securities;
(*d*) Commission on payment of interest;
(*e*) Expenses incurred in the conversion renewal redemption or consolidation of loans;
(*f*) Exchange on transference of moneys.

(2.) Unless it is otherwise agreed between the Commonwealth and a State, the Commonwealth will not do anything in connexion with a loan of that State existing on the 30th June, 1927, or raised thereafter pursuant to this Agreement, which, if done by that State, would be a breach of any now existing agreement by that State with any Bank.

(3.) A certificate by the Auditor-General of the Commonwealth stating the amount to be repaid by a State to the Commonwealth and the matter in respect of which the repayment is to be made shall, in the event of a dispute, be conclusive as to the amount and matter stated.

ALTERATION OF THE CONSTITUTION.*

15. The Commonwealth will take the necessary action to submit to the Parliament of the Commonwealth and to the electors proposals for the alteration of the Constitution of the Commonwealth in the following form:—

"105A.—(1.) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

(*a*) the taking over of such debts by the Commonweath;

(*b*) the management of such debts;

(*c*) the payment of interest and the provision and management of sinking funds in respect of such debts;

(*d*) The consolidation, renewal, conversion, and redemption of such debts;

(*e*) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and

(*f*) the borrowing of money by the States or by the Commonwealth or by the Commonwealth for the States.

(2.) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3.) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(4.) Any such agreement may be varied or rescinded by the the parties thereto.

(5.) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto, notwithstanding anything contained in this Constitution or the constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.

(6.) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section 105 of this Constitution."

INDEMNITY

16. Each State agrees with the Commonwealth that it will by the faithful performance of its obligations under this Agreement indemnify the Commonwealth against all liabilities whatsoever in respect of the public debt of that State taken over by the Commonwealth as aforesaid (other than the liabilities of the Commonwealth under this Agreement to pay interest and to make sinking fund contributions and under Clause 13 ot this Agreement), and in respect of all loans of that State in respect of which this Agreement provides that sinking fund contributions shall be made.

ACCOUNTS

17. Separate accounts shall be kept by the Commonwealth for each State in respect of Debt, Interest, and Sinking Funds.

* The proposals contained in Clause 15 were submitted to the Parliament of the Commonwealth and to the electors and were approved in accordance with the Constitution of the Commonwealth. The law embodying the proposals became operative on 13th February, 1929, (Constitution Alteration (State Debts), Act (No. 1 of 1929)).

INDEX